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CONVEYANCER'S NOTEBOOK.

This number shows the continued pressure of legislation upon the realm of the conveyancer. Some part of this legislation remains as temporary, at least for the time being, and there is a reasonable degree of certainty that some of it at any rate will disappear. But a great deal of it forms part of the permanent structure of our land law. The landowner will enjoy his rights not merely subject to those interests and obligations imposed in favour of other private owners and created largely by documents appearing in some form upon the title. There are limits upon user and enjoyment, not to mention the possibility of displacement, which affect many acres and in some degree all land. The incidence of this interference with private property is not really new but has now become so common that it requires a new attitude on the part of the practitioner. For the very reason that it does not so readily show upon title this complication presents a serious problem.

In our view the time has gone by when housing legislation and planning schemes and the like should be treated as matters calling only for casual attention in particular cases; law that is to be looked up in those awkward and inconvenient cases in which it crops up. The nature and character and general incidence of this legislation should be carried as part of the general equipment of the conveyancer like his knowledge of the Settled Land Act. In our opinion this leads to another point, namely, that the time has come to reconsider the form of contracts of sale. The incidence of these statutory liabilities (if we may so term them) is not equal on all parcels of land. Some are affected more than others and in different ways. There seems to be some ground for the view that the time is now ripe to consider whether by means of schedule or otherwise any land affected by these statutory liabilities should be clearly shown as affected and the ways in which it is so affected defined. The increasing tendency to require notices and orders to be registered as local land charges should largely help. The profession might perhaps press for a general provision requiring registration in all cases where the incidence of statutory obligation is not uniform. But registration will not help purchasers at auction sales unless disclosure of the register in auction particulars is made compulsory. We can see no reason why this should not be the case

subject to some time limits for search to be effective. We are not, however, attempting to solve a problem but to draw attention to the need for its solution.

Emergency Laws (Transitional Provisions) Act.—The main purpose of this Act is to continue until December 31, 1947, certain of the Defence Regulations notwithstanding the expiry of the Emergency Powers (Defence) Acts, 1939—1945. There is a proviso that any of the Regulations may be revoked in whole or in part. The continuation, of course, includes any order or other instrument made under the Regulation.

The Regulations so continued (contained in Schedule I) are of course very various. Most of them do not directly affect the conveyancer as such, but practitioners should acquaint themselves with the provisions of the schedule. It is possible here to note only a few of the more obviously important ones. Part I of the First Schedule deals with Defence (General) Regulations, and Part II with Defence Regulations other than those in Part I. There are minor amendments in some cases, such as the substitution for the words " the defence of the realm " the words " the protection of the public or the maintenance of supplies and services essential to the life of the community " : see Regulation 16, which concerns the control of highways over or near defence works and protected places.

Some of the Regulations so continued are as follows :—

Regulation 20 affecting change of name, prohibits aliens from changing their name or carrying on business in any other name and restricts British subjects from using or assuming any other name for any purpose without advertisement.

Regulation 22, which confers billeting powers now to be limited to the Minister of Health (presumably this is what is meant by the King's Printer's copy which reads : " All references to the Commissioners of Works shall be comitted ") and no billeting notice shall come into force until seven days after service except by agreement.

Regulation 50, power for persons authorised by various Government Departments to do work on land, but in place of the words " the defence of the realm, etc." we are now to read " the demolition and clearance of property damaged by war operations ".

Regulation 50B applies only to fixtures severed before the passing of the Act (February 14, 1946).

Regulation 52, land may be used for any military, air or naval purposes by order of a Secretary of State or the Admiralty.

Regulation 55C, which imposes restrictions on the registration of new clubs; and after the words " refreshment " in sub-paragraph (a) of paragraph 4 is to be added " or for cultural or political activities ", and sub-paragraph (b) of paragraph 4 and the words " provided that " to the end shall be omitted.

Regulation 85 is continued so as to enable entry upon and inspection of land for the purposes of the Regulations, but paragraph 1 is reframed.

Under Part II the Defence (Agriculture and Fisheries) Regulations, 1939 and 1940 are continued with the omission of Part V, and so are the Defence (Building Societies) Regulations, 1940.

Section 3 of the Act extends the "war period" under the Agriculture (Miscellaneous Provisions) Acts, 1940, 1941, and 1943, to include the period under the Act (*i.e.*, December 31, 1947).

Section 9 (2) extends the operation of the Settled Land and Trustee Acts (Courts General Powers) Act, 1943, to the period of this Act, so enabling the Courts to continue to exercise very wide powers of authorisation.

Section 10 similarly extends the operation of the Marriage (Members of His Majesty's Forces) Act, 1941, and Marriage (Scotland) (Emergency Powers) Act, 1940.

Section 12 confers a power on local authorities not merely to do work for the purposes of protecting persons, etc., from hostile attack from the air or any purpose connected with the war, but also to enter on land and remove such works and to restore the land to its previous condition. The power extends for the period of the Act.

By section 15 a few temporary provisions are now made permanent. These include amendment of the Land Drainage Act, 1930, so as to enable Catchment Boards to do what other drainage boards could do under section 35 and to give drainage boards power to act notwithstanding that some other person is under an obligation to do the work by reason of tenure, custom, prescription or otherwise. Agricultural land for the purposes of the Agricultural Returns Act, 1925, includes land wholly or mainly for the purposes of breeding or keeping poultry, and returns made under that Act may be used "in any manner" which the Minister of Agriculture or the Secretary of State "thinks necessary or expedient in connection with the maintenance of the supply of food in the United Kingdom". This last provision seems to be a shadow of things to come; as, indeed, is the continuance, no doubt inevitable, of so many temporary regulations.

Building Restrictions (War-Time Contraventions) Act.—This Act is designed to deal with the problem where war needs led to a breach of building restrictions. In effect it operates to treat the restrictions as having been in abeyance during the war period and any further period during which the Crown is in possession so that any limitation of proceedings shall not be barred by that lapse of time: section 1 (1). Subject to this where there are works which contravene the restrictions which have been begun by the Crown and are subsisting, proceedings can now be taken to enforce the restriction if the Crown has ceased to have possession: section 1 (2). The Act then provides machinery for authorising a breach of the regulations or planning scheme. In fact no enforcement steps can be taken without giving twenty-eight days' notice: section 3; and any person who is occupier-owner or has and intends to acquire any interest can apply to the Town Planning Authority for a determination whether the works or use of the land fail to comply: section 2. There is an appeal to the Minister: section 2 (7) where the applicant "is aggrieved by a determination". There is the

now common form clause authorising entry upon land for the purpose of discovering contraventions of the building regulations or planning control. This brief sketch of the Act is intended only to indicate its nature. In an appropriate case it requires careful study, for the implications of the words employed are by no means clear.

Trunk Roads Act.—This is subsidiary to the principal Act and adds trunk roads as defined in the schedule. From the point of view of the property-owner the vital point is that it confers yet another compulsory power to vest property in a person other than the owner: section 4 (2); to acquire land for the purposes of a trunk road: section 5; to transfer private bridges to the Minister: section 7.

One technically interesting provision is contained in section 8 (4). Under this a notice served by the Minister under the Roads Improvement Act, 1925, or a building line prescription under that Act or an improvement line under the Public Health Act, 1925, is subject to the rules for the registration of local land charges under the Land Charges Act, 1925. It is, therefore, required to be registered by the proper officer as a local land charge. The sub-section does not say that it shall be void against a purchaser if not so registered, but it is submitted that if the provisions of the Land Charges Act are to apply, as the sub-section says they shall, then this is a necessary consequence. It is equally obviously an inconvenient consequence, but we refuse to believe that public officials never make mistakes and never omit to do those things which they are required to do. In any event it is high time that the vendor was put under a statutory obligation to search the local land charges register to disclose, at least in case of auction sales, all subsisting entries.

Judge in Chambers.—We have received the following memorandum from the Chief Chancery Master:—

CHANCERY DIVISION.

The following explanatory memorandum has been issued by the Judges of this Division to remove some misapprehensions about the differences between their sittings in Court and in Chambers respectively:—

1. The Judge sits either in Court or in Chambers; there is no intermediate or other kind of sitting.

2. When he sits "in Chambers" (whether in his Court or in his private room) the hearing is invariably within closed doors, and only the interested parties (or such of them as the Judge thinks proper to admit) are entitled to be present. Counsel are not required to be in robes, unless in a particular case the Judge otherwise directs.

3. There is no such thing as an "open" sitting in Chambers, but if at any stage of the hearing (*e.g.*, for the delivery of his judgment)

the Judge thinks it proper that the further proceedings should be in public he will adjourn the hearing into Court.

4. When the Judge sits "in Court" the hearing is in public, and counsel must attend in robes. The only circumstance in which the public may be excluded from the hearing of a case in Court is when in the opinion of the Judge publicity is likely to defeat the ends of justice, *e.g.*, where a secret process has to be disclosed or the affairs of an infant have to be discussed. When such exclusion is ordered, the hearing although "in Court" is said to be "*in camera*".

5. Normally at every sitting in Chambers the Judge is attended by the Master, and at every sitting in Court by the Registrar. The Judge may, however, require the attendance of the Registrar (either in addition to or in place of the Master) at a sitting in Chambers, or of the Master (in addition to the Registrar) at a sitting in Court if he considers such attendance to be desirable.

6. The expression "in Court as Chambers" is misleading, and should not be used. It has only meant that the sitting in Chambers is to be held in the Judge's Court and not in his private room.

7. When a sitting of the Judge in Chambers is announced in the Cause List, the name of the Master ought usually to be mentioned. The omission of such name indicates that the Judge has directed that the Registrar is to attend in the Master's place.

A. H. HOLLAND,
March 15, 1946. Chief Master.

Completion statement—deduction of tax.—We have received the following letter :—

> I should appreciate your opinion upon the following point of apportionment, which if "finicky", is of some practical and recurring importance.
>
> Leasehold property was sold as at January 1 last, the annual ground rent due on February 2 being allowed to the purchaser by way of deduction; the actual completion statement in this respect was as follows :—

Balance of purchase price			£2,500 0 0
less proportion of ground rent, £3 13s. 0d., due February 2, 1946, from February 2, 1945, to December 31, 1945, 332 days ...	£3 6 4		
less proportion of tax, at 10s. in the £, £1 16s. 6d., from February 2 to April 6, 1945, 62 days, due to Vendor ...	6 2		
			3 0 2

> It is contended that to deduct tax in this fashion is erroneous, and that apportionment should be of the net ground rent actually payable, £1 16s. 6d.
>
> In support of the above method, it is argued that tax is due for the fiscal year April 6 to April 5 (I. T. A., 1918, s. 2), and that it should be treated just as Schedule "A" tax deducted from rent. While the Schedule "A" rules, No. VIII, r. 4, enables tax

to be deducted at the standard rate for the year in which the amount payable becomes due, this is said to be a matter relevant only to the payment of tax, not to the period over which it is due, and that the latter part of section 39 (2) of the F. A., 1927, is a recognition of this.

In support of the above mode of apportionment, it is urged that the administrative convenience of the Inland Revenue should not be allowed to influence the position as between vendor and purchaser, and that the Inland Revenue are not really concerned, since they will recover the tax deducted anyhow, either directly or by adjustment.

I should like very much to have your valued opinion as to the proper mode of apportionment which should be adopted.

Comparisons have inevitably crept into the dispute by way of illustration, and while the example of Schedule " A " tax deducted from rent can be urged, why is it that there is no similar apportionment of tax deducted from dividends, on the death of a life tenant, where the net figures are taken?

We confess with our correspondent to great difficulty in following the logic of the procedure outlined in the letter. Apparently the position set up is that the vendor claims to be entitled to the full rent without deduction of tax during the time when he was in receipt of rents and profits and is prepared to allow to the purchaser his proportion of tax which he will have to pay during the time that the purchaser is in possession. Such a statement assumes that neither the vendor nor the purchaser at the date of the completion statement has discharged the tax. In point of fact neither of them will discharge the tax, but it will be paid by the lessee who will deduct it from his rent. This, of course, he is bound and entitled to do. Since the tax has properly been paid by the correct person the purchaser cannot recover the tax paid for that period during which he was not in possession from the tax authorities. The tax authorities would certainly not relish trying to recover it from the vendor, since it was to prevent this sort of difficulty that the primary liability was put upon the tenant rather than the landlord. The result, therefore, of a completion statement in this form seems to leave the total liability for the whole year's tax to fall on the purchaser. We do not see how this can be right. If other subscribers have experienced the same problem and take a different view we should be pleased to receive their arguments.

Compulsory acquisition—authorisation procedure.—The gradual reform of the process of compulsory acquisition of land is taking place piecemeal. The latest instalment is the Acquisition of Land (Authorisation Procedure) Act, 1946, which is essentially procedural and does not involve much in the way of principle. It is primarily of importance to Local Government officers and civil servants and requires very brief notice here. Section 1 and Schedules I and II deal with the normal procedure for a local authority and the Minister of Transport. Notice to owners, occupiers and lessees (except tenants for a month or any

period less than a month) and advertisement make the basis of these rules. The notice must give the owner, etc., a stated period of not less than twenty-one days in which to make objection and must state how the objection shall be framed. If objection is made there must be a public inquiry or hearing before an appointed person before the confirming authority confirms with or without modification *unless* the confirming authority is satisfied that " the objection relates exclusively to matters which can be dealt with by the tribunal by whom compensation is to be assessed ", in which case the objection can be ignored. This goes to exclude an objector from a hearing altogether in a case in which the discretion is exercised against him. It would be interesting to know whether the Court would insist upon the confirming authority hearing an appeal by an objector against his objection not being heard!

The only ground on which the order of the confirming authority can be appealed against is that the authorisation of a compulsory purchase " is not empowered to be granted under this Act " or any enactment to which the procedure is appropriate. This appeal must be lodged *within six weeks* from the date on which notice of confirmation is published.

Presumably appeal would lie if the rules of the Act are not complied with because in that case surely an authorisation " is not empowered ". If that is so we should like to see the effect of an appeal based on failure to give notice to a " lodger " who surely " occupies " but is not " a tenant of " his rooms. The continuous use of expressions that are not satisfactorily defined in this legislation is one of its more perturbing features—save for those lawyers who indulge in litigation.

The provisions relating to compulsory purchase by a Minister are, of course, modifications on these.

Section 2 and Schedule III provides a more summary procedure. This is limited to five years from the commencement of the Act. Here, if the confirming authority thinks that " it is expedient " that the local authority should purchase land *and* that it is " urgently necessary in the public interest " that possession should be obtained without delay the confirming authority may in lieu of the provisions just noticed or those of the Town, etc., Planning Act, 1944 (to which section 1 does not apply) authorise the local authority to proceed under Schedule III. The section also includes purchases by the Board of Trade under the Distribution of Industry Act, 1945, as well as by local authorities and the Minister of Transport. The procedure is notice and advertisement with *fourteen days* to lodge objections. Notice is to owners, including lessees holding under a lease with an unexpired term of three years, and occupiers. There is no provision for a public inquiry and the confirming authority is only required " to consider any representations duly made ". Nor is there any provision for appeal to the Court. The effect of this omission may be interesting. It appears to be capable of two constructions : first, that, all right of appeal is excluded, or seccondly, the ordinary right to apply to the Court under the doctrine of *ultra vires* exists. At any time after seven days of the authorisation and not later than three months the acquiring authority can enter into possession notwithstanding that the purchase has not been completed. Possession will be taken both as to use and the rights of other persons

affected to operate as if the purchase had been completed. This summary procedure does not apply to " any dwelling-house ". How far the exception may apply to any land held with a dwelling-house may give rise to difficulty.

One significant feature of this section is the power to extend the period for a further year by an address by each House of Parliament. Presumably this means that there is an indefinite power of extension by successive periods of a year.

There are a number of other provisions and many consequential amendments to existing Acts contained in this statute, including a power to extinguish certain public rights of way. To deal with them in detail would be too lengthy for this note and all we can do is to recommend its provisions for careful study to any practitioner whose clients are affected by either of the types of notice referred to in the foregoing paragraphs.

Alien enemy property—forfeiture.—In a series of cases commencing with *Re Gourju*, [1943] Ch. 44, the effect of property vesting in the Custodian Trustee upon interests determinable upon assignment has been discussed. In some cases but not all (see *Re Hall*, [1944] Ch. 46) the effect has been to work a forfeiture. This position has now been dealt with by S. R. & O., 1945/887, made under the Act which directs that where such vesting would cause a forfeiture the property shall be deemed not to have vested. It would seem that the question has now changed from whether or not a forfeiture has occurred to whether or not vesting in the Custodian Trustee has taken place.

BEQUESTS TO SERVANTS.

By E. H. BODKIN, Barrister-at-Law.

Legacies to servants have perhaps given rise to more problems than those to any other class of beneficiaries, except charities. Though the days of large domestic staffs have gone by, perhaps for ever, yet in regard to outdoor servants in the wide sense now accorded to that term, questions are still likely to arise; and as appears from the recent case of *Re Feather, Harrison* v. *Tapsell*, [1945] 1 A. E. R. 552, some additions to the ordinary form of bequest may, in view of the continuance of conscription, be desirable where male servants are employed. There is even some conflict of judicial opinion as to the interpretation to be put upon the term " servants " in a will when there is no context to assist the construction. According to the view expressed by P. O. Lawrence, J., in *Re Drake, Drake* v. *Green*, [1921] 2 Ch. 99, the word in the absence of any controlling context should receive a comprehensive meaning. His Lordship appears to have regarded it as virtually equivalent to the phrase " indoor and outdoor servants ", and in any case as not confined to those who were purely domestic. Every servant, he thought, ministered in some way to the personal comfort or

wants of his or her master and it was difficult to know where to draw the line. The only question was whether the relationship of master and servant existed between the claimant and the testator. He refused to follow *Re Forrest, Bubb* v. *Newcombe*, [1916] 2 Ch. 386, holding that not only a cashier, an estate clerk, gardeners, gamekeepers, coachmen, grooms, stable hands and chauffeurs (as to whom there could be little doubt) were included under the description "indoor and outdoor servants", but also woodmen and labourers on a farm and in a timber yard.

In *Re Forrest, supra*, Sargant, J., had decided in a case where the testator had a domestic staff as well as farming his own land, that labourers hired by the year but paid weekly wages and who had the use of cottages on the estate were not included in the term "servants" used alone. Though they were servants in some sense his Lordship considered they were not servants in the service of the testator within the meaning of the will; he was referring to persons who ministered in some way to his personal comfort or wants, persons in the like relation to him as domestic servants, though not necessarily those employed in the house. It was, however, admitted that an underkeeper was included. Probably the better and more logical view is that the addition of the words "indoor and outdoor" extends the meaning; in *Re Ravensworth, Ravensworth* v. *Tindale*, [1905] 2 Ch. 1, relied on by P. O. Lawrence, J., though it was apparently assumed that certain woodmen, keepers, masons and hinds would have been entitled as servants, the point was not argued, as the case was decided on other grounds. It is now clear, however, that notwithstanding certain authority for the contrary view in the older cases (*e.g., Jones* v. *Manley*, 2 Ch. Rep. 162), the class to take will not be confined to menial servants; nor would a reference to yearly wages now be considered to imply domestic servants, who were in the old days usually hired by the year. Even in 1858 it was held in *Thrupp* v. *Collett* (No. 2), 26 Beav. 147, that a gardener and an undergardener living off the premises were servants in the testator's service. More recently in *Re Travers, Hurmson* v. *Carr*, 86 L. J. Ch. 123, a hospital nurse was so regarded. A chauffeur is a "manservant", though the term was in *Re Bell, Wright* v. *Scrivener*, [1914] W. N. 84, considered more appropriate to a valet.

On the other hand with the modern levelling of classes, some persons would probably not be considered (or consider themselves) servants who would have been so in a more old-fashioned state of society.

This is well illustrated by the decisions on bailiffs or land agents. A person occupying this position was in *Armstrong* v. *Clavering*, 27 Beav. 226, regarded as a servant; though he sometimes dined with the testator, he was treated as a dependant, in accordance with the custom of the neighbouring landed proprietors. And in *Bulling* v. *Ince*, 9 Jur. 936, and *Re Drake, supra*, farm bailiffs were held to be servants. In *Re Rosse, Parsons* v. *Rosse* (*Earl*), 93 L. J. Ch. 8, however, where it was pointed out that *Armstrong* v. *Clavering* and *Bulling v. Ince, supra*, turned on references in the will to the bailiffs' "service", it was held that a land agent and his assistant were not entitled under a bequest to indoor and outdoor servants "not in receipt of daily, weekly, or monthly wages". They received yearly remuneration and the former a share of profits. Lord Sterndale, M.R., said: "I do not

believe there is anyone outside the Law Courts who would suggest that these men were servants in receipt of wages". This case turned on the word "wages". But in a case where the word "salary" was used, Russell, J., expressed himself almost as strongly in regard to agents occupying a similar position. There were, however, other indications in the context to exclude them (*Re Earl Brownlow, Tower* v. *Sedgwick*, [1924] W. N. 322). A land agent, an estate agent, the manager of a stud farm and racing farm, and a private trainer were, it is true, all held entitled under a bequest to servants in the will of Sir Ernest Cassel (*Re Cassel Public Trustee* v. *Ashley*, 39 T. L. R. 75); but the circumstances were exceptional. The testator exercised so rigorous a supervision over them that the discretion they exercised was very small. Also on the particular wording of the will he was regarded as intending to benefit all persons who had ministered to his service. In the case of a man of extraordinary wealth like him, observed Sargant, J., many persons might be in the position of servants whose social position was entirely different from that of those usually ranking in the servant class. So, for example, the captain of a private steam yacht might be a servant for this purpose, though a highly trained engineer.

Employees in a business or profession, *e.g.*, a barrister's clerk, of course will be excluded; but difficult questions may arise in distinguishing between the testator's employees and servants and also in determining whether he is in fact carrying on a business.

The addition of "domestic" of course narrows the meaning of "servants"; the word is generally used in contradistinction to "outdoor", and is usually regarded as synonymous with "household". Though the tendency of the Courts has been rather to enlarge its meaning, its derivation suggests that it is narrower than the term "menial", which is now avoided as having a somewhat derogatory flavour. "Domestic" is defined by Johnson as belonging to or inhabiting the house; "menial" as belonging to the retinue or train of servants, being derived from the Anglo-Saxon meiny or mesnie, a household or family. Roche, J., in *Re Junior Carlton Club*, [1922] 1 K. B. 166, 169, thought the terms interchangeable. The meaning of "menial" was discussed in relation to the expression "domestic or menial" service in the Employers and Workmen Act, 1875, in the case of *Pearce* v. *Lansdowne*, 69 L. T. 316, 319, where Collins, J., said the question must vary with the facts of each case, but the principle to apply was that enunciated in *Roberts and Wallace on Employers' Liability, viz.*, that it denoted "those whose main duty was to do actual bodily work as servants for the personal comfort, convenience or luxury of the master, his family and guests, and who for this purpose become part of the master's residential or quasi-residential establishment". Roche, J., in *Re Junior Carlton Club, supra*, adopted this definition as applying to the Unemployment Insurance Act, 1920, where the word "domestic" alone appears. In various cases on the Act of 1920 river-keepers, gamekeepers, dairy-maids, and attendants at museums have been held to be employed in domestic service, but not private secretaries or cooks and stewards on yachts; it is not confined to house-work (*Cameron* v. *Royal London Ophthalmic Hospital*, [1941] 1 K. B. 350). Lord Sterndale, M.R., was careful to point out in *Re Jackson, Jackson* v. *Hamilton*, [1923] 2 Ch. 365, 368, that the wide definition

adopted in these cases is not necessarily applicable to the construction of wills, but he thought they showed that the seventy years since the decision in *Ogle* v. *Morgan*, 1 D. M. & G. 359, had perhaps somewhat changed the popular meaning of "domestic servants", and the same *prima facie* meaning was not now necessarily to be attached to them. The question has also been considered in relation to the length of notice required to determine a servant's hiring. In this connection a farm labourer, a farm bailiff and a governess have been held not within the rule that one month is sufficient notice for domestic or menial servants, but a head gardener has. A huntsman is also a menial servant and was always, as Byles, J., said in *Nicoll* v. *Greaves*, 17 C. B. (N.S.) 27, regarded as one of the retinue even in the case of the Princes of the Church in olden times; and the same has been held in regard to the Unemployment Insurance Act. Decisions on other statutes, *e.g.*, the Bankruptcy Act, are of little value.

To return to the will cases, there is but little satisfactory authority on the point. According to the judgment of Lord Truro in *Ogle* v. *Morgan*, *supra*, a gamekeeper or cowboy would clearly not fall within the class of domestic servants; but the words there used were servants in "my domestic establishment", and the will was that of a nobleman who had no business employees, so that it could not have been used in contra-distinction to his business or any other establishment. The word "domestic" was really regarded by Lord Truro as introduced to draw a distinction between servants in the house not receiving board wages and those not boarding in the house and receiving proportionately higher wages; apart from this distinction the outdoor servants would have received more than their fair share. The decision was followed with reluctance in the Irish case of *Re Ogilby*, [1903] 1 Ir. R. 525, and *Re Drax*, *Savile* v. *Yeatman*, 57 L. T. 475, which, however, may be supported on the ground that there also the servants were on board wages; but it is not, as Lord Sterndale, M.R., observed in *Re Jackson*, *supra*, an authority that an outdoor servant cannot be a domestic servant. Apart from authority the Master of the Rolls would have thought a chauffeur and a coachman living over stables would be included; and also probably a gardener living in a cottage of the testator's. The actual decision in *Re Jackson*, where the above persons were held to be entitled, turned however, on the fact that legacies were also given to the testator's employees, and the distinction intended to be drawn was between them and his servants generally. But Younger and Warrington, L.JJ., went so far as to express the view that *Ogle* v. *Morgan*, *supra*, did not lay down any rule of law. In *Re Lawson*, *Ward* v. *Bringloe*, [1914] 1 Ch. 682, a male nurse was held to fall within this category; as also was a housekeeper.

It seems now to be settled that in order to take under a gift to servants in the testator's service, or even to "my servants", it is not essential for them to be exclusively in his employ. The test appears to be whether the testator had the prior call on the servant's time. The bailiff in *Armstrong* v. *Clavering*, *supra*, also acted in the same capacity for several neighbouring landowners, and the male nurse in *Re Lawson*, *supra*, served others when not actually engaged with the testator. On the other hand the errand boy in *Thrupp* v. *Collett* (*No.* 2), *supra*, who was employed to carry letters and papers to and

from the Post Office for six months in the year when the testator was in residence, and neither continuously nor exclusively, being free to work for anyone else, was held not a servant in the testator's service. Sir John Romilly, M.R., said the testator could not have so treated him, and that a charwoman who came once a week could with as much reason be included. And generally no person would be included unless employed regularly; probably nothing less than a weekly hiring would suffice (cf. *Ex p. Grellier*, *Re MacNeill*, Mont. 265). But nowadays the class to take will not be limited to those who are obliged to spend their whole time with the testator, and live in the house and "have diet" from the master, as the Lord Keeper held in *Townshend* v. *Windham*, 2 Vern. 546. As regards the second condition it may be noted that where the phrase "living with me" is used actual residence in the testator's house or on his estate is not essential (see judgment of Turner, V.-C., in *Blackwell* v. *Pennant*, 9 Hare 551; *Thrupp* v. *Collett* (*No.* 2), *supra*).

Doubts may sometimes arise as to whether the relationship of master and servant ever subsisted in law between the testator and the person claiming a legacy. The latter may not have been engaged by some person authorised to act on the testator's behalf, or the testator may have had merely the benefit of the services of someone else's employee.

Thus in *Re King*, *Jackson* v. *Att.-Gen.*, [1917] 2 Ch. 420, certain of the claimants had been engaged by the committee of the person of the testator, and others by a person placed by the committee in charge of a house rented by him for the testator where an establishment was maintained under the authority of the Master in Lunacy. The committee was, under a scheme, allowed a certain sum to provide for the testator's comfort, including the engagement of a proper staff of servants, and was not liable to account for the disposition of the money so long as the duty of maintaining him was properly performed. It was held that none of these servants was entitled under a bequest to servants in the testator's service. They were in the service of the committee or the Court. Younger, J., considered the words "in my service" did not mean "attending upon me"; the testator made the codicil with reference to servants who had been engaged, and would in the ordinary course be engaged, by himself, and there was no reason to enlarge the ordinary meaning of the words. In *Re Lawson*, *supra*, where a receiver had been appointed under the Lunacy Act, 1890, between the servant's engagement and the testator's death, the point was not dealt with, and the case was not an authority either way. Further, the difference between a receiver and a committee of the person might be, and for this purpose probably was, very marked. In *Re Lawson*, *supra*, it is to be observed that the nurse was engaged by the testator's wife at a time when the testator was already apparently not in a condition to realise that he might benefit under the will. There would, however, have been no determination and renewal of the contract of service on the receiver's appointment if he were to be deemed acting as the statutory agent of the testator, as a receiver is for some purposes; and the case seems to be distinguishable from *Re Lawson*, *supra*, on this ground (cf. *Re Marshall*, *Marshall* v. *Whately*, [1920] 1 Ch. 284).

When the testator, as occurred in *Vaughan* v. *Booth*, 16 Jur. 808, has let his house furnished with the use of the servants, they may still remain in his service even if their wages are included in the rent, or even if paid in part directly by the tenant if the testator retains control over them. In the above case the testator had paid the gardener additional wages to those paid by the tenant and made it clear that he was responsible for his carrying out his duties properly. The old cases of *Chilcott* v. *Bromley*, 12 Ves. 114, and *Howard* v. *Wilson*, 4 Hag. Ecc. 107, are illustrations of the same principle. In the former a job-master provided the services of a coachman with the hired carriage and horses. He was held to be in the testator's service so far as driving the carriage, but in consequence of a retainer by the job-master and under contract with him. In the latter case, on the other hand, the testatrix chose, and had the right to dismiss, the coachman, and he remained when she changed her job-master. He accompanied her when she went to watering places and lodged in the house. He was not asked to dinner at Christmas with the other servants, being a married man, but—a rather delightful touch—was sent a leg of mutton instead. He was in these circumstances held to be in her service for the purpose of the bequest. Whether in such a case the testator pays the servant directly or indirectly is of little importance.

Another question which may arise is whether, where the bequest is conditional on the legatee being in the testator's service at his death, the service has for this purpose been terminated before that date.

"Service" in such bequests means actual service, and does not include constructive service such as may exist where the contract has been broken by wrongful dismissal but exists for the purpose of claiming damages for its breach. Even wrongful dismissal, as was decided in *Darlow* v. *Edwards*, 1 H. & C. 547, prevents the legatee claiming the legacy. On the other hand, services need not actually be being rendered; they may have been dispensed with by the master without terminating the contract. Thus, even if the servant has been sent away prior to the testator's death but his wages have been paid up to a date subsequent thereto and before which his contract cannot lawfully be terminated, he would still be entitled unless immediate dismissal were intended. *Re Serres, Venes* v. *Marriott*, 10 W. R. 751, where this position arose, turned on the facts that the servant had discharged herself. In *Re Hartley*, 26 W. R. 590, an Order in Lunacy for the sale of the testator's furniture and effects was held to have amounted to dismissal.

Owing to the difficulty of ascertaining the true position as to determination or otherwise of the contract of service, declarations by the master have been held admissible in evidence, not as showing his intention, but as proving whether in fact the servant had been dismissed. Thus in *Herbert* v. *Reid*, 18 Ves. Jun. 481, the servant had quitted the house either on the instructions of the testator, or of one of the executors and residuary legatees, who pretended to act for him. It appeared in evidence that the testator had said that he considered the legatee still entitled to the legacy and consequently must have considered him as still in his service; even the defendants in their evidence only alleged that she had quitted the house, not the service. No person, said Lord Eldon, except the master and the servant could

give evidence of whether she had left in fact, and from necessity the master must explain *quo animo* he sent her from the house, whether putting an end to the relation entirely or only suspending the performance of the service.

In the recent case of *Re Feather*, *Harrison* v. *Tapsell*, [1945] 1 A. E. R. 552, Cohen, J., admitted the executor's evidence that at an interview the testator discussed with him the alteration of his will so as to remove any doubt whether the defendant was still in his employ, and emphatically affirmed that he was so and that alteration was therefore unnecessary.

Similar principles apply when the condition of the legacy is so many years' service. Such service must in general be continuous; if the contract has been terminated, service before breach cannot be reckoned even if it be renewed afterwards. The point has been discussed in several cases in regard to war service. In *Re Cole*, [1919] 1 Ch. 218, there was a bequest of shares to a son of the testator if he remained in the employment of the company until he attained thirty-three, and it was held that voluntary enlistment under that age with the approval of the directors did not disentitle him to the bequest. Sargant, J., said the question whether he was in the employment of the company was not the same thing as whether he was in fact rendering service to the company. If he were to be ill for several years, the company might wish to retain him in their employ, and whether or not they paid him wages would not be in any way conclusive. The intention of the directors and the son was that the employment should continue, but that there should be a temporary dispensation of obligation to render service under the contract of employment.

Similarly, in *Re Lawson*, *supra*, where there was a bequest to domestic servants who should have been in the testator's service for two years prior to his death, a male nurse was held entitled though he had been absent for four months on sick leave. The Receiver in Lunacy who acted for the testator had not paid him any wages, as he was not in a position to make a gratuitous payment. In *Re Cole*, *supra*, the salary was not paid because the son did not require it. On the other hand, as appears from *Re Drake* and *Re Feather*, *supra*, a mere understanding that the servant is to be taken back will not render the service continuous; and if he joins the army, whether voluntarily or under compulsion, the contract of employment will, it seems, automatically be determined. In the above cases the understanding or promise was, it should be noted, not even a binding option for the servant to re-enter the master's service, as there was no consideration. But even a legally binding option would not render the service continuous; to have this result there would require to be an agreement to resume the service binding on both parties which could be construed as a continuous hiring with a mere temporary dispensation with the rendering of services. Thus the Reinstatement in Civil Employment Act, 1944, would not appear to affect the question.

Re Feather, *supra*, turned on the particular facts on which it was held there had been no determination. The testator agreed to pay the handyman £2 per week during his absence and extra for odd jobs while on leave; also to allow his wife to occupy a cottage rent free while she continued to collect rents in lieu of her husband.

The language of the will may, however, in some cases be satisfied by discontinuous periods of service, which in the aggregate amount to the requisite length. This was held to be so in *Re Drake*, *supra*, where the condition was simply that the legatee should have been in the testator's service for upwards of ten years.

Another point to remember is that where the legacy is simply to those who have been in the testator's service for so many years, the context may, as in *Re Sharland*, *Kemp* v. *Rozey*, [1896] 1 Ch. 517, show that the qualifying period need not end at the testator's death, but that a servant who has served for the required length of time and been dismissed prior to the death can qualify.

It is not clear on the authorities at what date the persons to take under a gift to servants are, in the absence of any indication in the context, to be ascertained. The better opinion would appear to be that, as in other class gifts, the class is to be ascertained at the testator's death. This was the view of North, J., in *Re Marcus*, *Marcus* v. *Marcus*, 56 L. J. Ch. 830, where the gift was of six months' salary to the testator's employees; the amount of salary might be larger at the date of the death than at that of the will, and if it was to be ascertained at the former, the class to take must likewise be then fixed. Eve, J., in *Re Travers*, *Hurmson* v. *Carr*, 86 L. J. Ch. 123, seems to have regarded the question as open. He considered the fact that the gift was of one year's wages as immaterial, but that an additional gift of mourning pointed to the testator's death as the date.

There may, however, be indications that servants at the date of the will are to take; *e.g.*, in *Parker* v. *Marchant*, 1 Y. & C. C. C. 290, the gift was of £x to A, B and C "who have lived many years in my family" and to the *other* servants, £500 each. If the date of the will is meant, it will usually be immaterial that the servant has left before the testator's death. There must, as North, J., observed in *Re Marcus*, *supra*, have been something more in the will in *Jones* v. *Henley*, 2 Ch. Rep. 162, than a mere bequest to "all my servants" to justify the decision that only those who were in the testator's employ at the date of the will and so remained until his death could take. Presumably if the legacy is to "my servant" in the singular, one who answered that description at the date of the will would take; but if there were no such person, then the testator's servant at his decease might be entitled. In *Re Feather*, *supra*, the words "if still in my employ" were considered as referring to the testator's death.

Other problems may require solution when the legacy is of so many years' wages. Under such a gift only those servants who are hired by the year and at a wage determined by the year can take (*Blackwell* v. *Pennant*, *supra*). The fact that such servants are paid weekly will not disqualify them; but servants hired by the week at a weekly wage cannot take. This appears from *Re Ravensworth*, *Ravensworth* v. *Tindale*, and *Re Forrest*, *Bubb* v. *Newcombe*, *supra*. The former case was criticised in *Re Sheffield* (*Earl*), *Ryde* v. *Bristow*, [1911] 2 Ch. 267, and would appear to bear hardly on domestic and outdoor servants hired on the terms which are nowadays customary. According to the judgment of Joyce, J., in the same case, the principle would have to be applied strictly with the result that, *e.g.*, under a bequest of three months' wages servants hired by the quarter would be excluded. The harshness

is, however, somewhat mitigated by the decision of the Court of Appeal in *Re Sheffield, supra.* This lays it down that, notwithstanding the Irish case of *Breslin* v. *Waldron,* 4 Ir. Ch. Rep. 333, where the legacy is of the " amount of " a year's wages, those hired by the week will be entitled to the aggregate of fifty-two weeks' wages. And possibly if the testator had only servants hired by the week at the date of the will these might be entitled even if the word " amount " does not appear (cf. *Ogle* v. *Morgan, supra*).

Board wages, as pointed out by Warrington, L.J., in *Re Jackson, supra,* ought not to be considered as wages at all; they are a fixed allowance in lieu of food and not, strictly speaking, remuneration at all; and it would seem that under a gift of a year's wages servants receiving them could never take in competition with those in receipt of ordinary wages, or possibly at all. Benefits such as free food or services, or the right to live rent free in a cottage, or payments in lieu thereof, are not included under a gift of wages. This is, as was held in *Re Peacock,* 45 T. L. R. 301, confined to money wages. Commission would, however, it seems, usually be included : *Re Smith, Phillips* v. *Smith,* [1915] W. N. 12, turned on the difficulty of calculating two months' commission, and *Re Whelan, Doyle* v. *Woodliff,* 153 L. T. Jo. 47, was also a special case. Lastly, it may be noted that a gift of so many years' " full " salary will not make the legacy free of duty, but only of other deductions : *Re Marcus, supra.*

FORM OF BEQUEST TO SERVANTS.

(1) I bequeath (subject as hereinafter mentioned) to each servant who shall have been at my death continuously in my service for —— years or upwards at wages or remuneration calculated by reference to a year quarter month or week or any other period not less than a week the aggregate amount of their wages or remuneration in money (including commission at the rate earned during the last qualifying twelve months of service) for [one] year without any deductions except for legacy or other death duties and in addition to any moneys due to them in respect of such wages and remuneration.

(2) For the purposes of this clause a servant shall be deemed to be in my service if and so long as the relationship of master and servant exists between me and him and notwithstanding he may not be rendering actual services

(3) No servant shall be entitled to any sums under this clause if at my death he shall for any reason have given or been given notice to leave my service

(4) If the contract of service between me and a servant shall have been prior to my death determined in any manner and for any reason and subsequently to such determination I shall in performance of any contract (express or implied) or pursuant to any option to re-enter my service conferred on such servant (whether express or implied by law and whether or not for value) have taken such servant back into my service or shall at my death have been required or liable to be required under any such contract or option so to do such servant shall be entitled for the purposes of this clause to aggregate the periods of service before and after such determination or to reckon the period

of his service prior to such determination as a period terminating (otherwise than by notice) on my death as the case may be

(5) " Servant " shall for the purposes of this clause mean indoor and outdoor servants including all persons regularly employed by me otherwise than in a purely clerical capacity in or about any messuages or lands owned or occupied by me (whether or not resident) but excluding all persons employed in any trade profession or business carried on by me [Or *for purely domestic servants* :—] servants employed in the domestic establishment of any messuages owned or occupied by me (whether resident therein or not) but not in or about the gardens grounds stabling or garages thereof.

DEATH DUTIES AND POWERS OF APPOINTMENT.

By B. J. Sims, LL.B., Solicitor.

The classic division of powers of appointment is into general and particular or special powers as they are usually called. A power is general where the donee can appoint property in favour of anyone, including himself, and a power is special where the donee is given power to appoint in favour of certain specified persons or a class or classes of persons. The division of valid powers into general and special powers is not, however, exhaustive, and there is a recognised third class of power where the donee can appoint to anyone with certain exceptions (*a*). This kind of power is not special inasmuch as there is no distinct class of objects specified and it cannot be general since some person or persons are excluded from the objects of the power. An example is a power to appoint to anyone other than the donee of the power. In view of certain *dicta* of Lord Haldane in *Houston* v. *Burns*, [1918] A. C. 337, at p. 342, and in *Att.-Gen.* v. *National Provincial Bank, Ltd.*, [1924] A. C. 262, at p. 268, the validity of this variety of power when conferred by will was the subject of some doubt on the ground that a testator cannot leave it to someone else to make a will for him. It was argued that in such a power the testator does not completely dispose of his beneficial interest in the property and entrusts its disposition to another, which is not allowed unless, as would be the case in a general power, the equivalent of ownership passes to the donee, and this does not happen when the donee is excluded from the benefit of its operation. Nevertheless, the validity of such a power was upheld in *Re Park, Public Trustee* v. *Armstrong*, [1932] 1 Ch. 580, where the will gave to the donee a power to appoint the income of a fund to any person " other than herself " or persons or charitable institutions.

In the law reports for 1945 there is another illustration of the third class of power and again its existence and validity have been confirmed. The decision of Vaisey, J., in *Re Jones, Public Trustee* v. *Jones*, [1945] Ch. 105, concerned a will in which the testatrix had given a protected life interest to her son and then directed that, after his death, the capital fund was to be held on trust " for such person or persons living

(*a*) See Jarman on Wills, 7th ed., p. 763.

at the death of my said son . . . as my said son shall by will or codicil appoint ". The learned Judge declared the power to be valid, regarding it as a power to appoint among all individuals living at the death of the donee of the power. The existence of this third class of power gives rise to some interesting questions of property law and conveyancing practice, particularly in relation to the law of wills and the operation of the rule against perpetuities. With regard to the former, it will be remembered that under the Wills Act, 1837, s. 27, a general devise or bequest operates (in the absence of contrary intention in the will) as an execution of a power where the testator can appoint property in any manner he may think proper. The view has been expressed that in this respect the class of power under discussion is covered by the decision in *Re Byron's Settlement*, *Williams* v. *Mitchell*, [1891] 3 Ch. 474, which will be referred to again later in this article (*b*). In other words, such a power is not within section 27 and will not be exercised by a general devise or bequest. So far as the rule against perpetuities is concerned the point has not been tested, but the view has been expressed that for this purpose such a power will be treated in the same way as a special power (*c*).

The primary purpose of this article is not to discuss any questions which may arise under the general law of property and conveyancing in relation to the third class of power but to deal with it from the point of view of the death duties. It is well known that powers of appointment are material in connection with these duties. In view of the proved tripartite division of powers of appointment, it is proposed to consider as briefly as possible the main principles of the law of death duties in relation to powers generally and, in particular, to consider the third member of the family of powers in that light. The correct classification of powers is material in determining the liability for and even the incidence of death duties as between beneficiaries. Since the position apparently varies as between estate duty, legacy duty and succession duty, the examination must be conducted under these separate headings (*d*). For convenience and to avoid possible confusion, it is proposed to confer the title of qualified power on this hybrid or third class of power, as described above, rather than use an expression such as " limited power " which is used in the Succession Duty Act, 1853.

(1) ESTATE DUTY.

By section 22 (2) (a) of the Finance Act, 1894, it is provided that " a person shall be deemed competent to dispose of property if he has . . . such general power as would if he were *sui juris* enable him to dispose of the property . . .; and the expression ' general power ' includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will, or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or exercisable as tenant for life under the Settled Land Act, 1882 (now 1925) or as mortgagee ". It is necessary to

(*b*) See The Conveyancer's Year Book, 1945, p. 8.
(*c*) See Key & Elphinstone, Precedents in Conveyancing, 14th ed., vol. 2, p. 1050.
(*d*) For a full examination of powers in this connection, see Green, Death Duties.

examine the meaning of general power in this context. At the outset it is clear that the power need not be specific and that it would include "a general authority which a person has by direction in his will to dispose of property (due to his estate) to his executors or administrators" (*per* Rowlatt, J., in *Att.-Gen.* v. *Quixley* (1929), 98 L. J. K. B. 315, at p. 317). This decision was upheld by the Court of Appeal. Since the manner of exercising the power is regulated by separate wording in section 22 the expression "as he thinks fit" presumably refers only to the choice of objects. A power may, therefore, be general in this sense although it is exercisable only by an instrument which expressly refers to the power and would not be executed by a residuary gift (see *Phillips* v. *Cayley* (1889), 43 Ch. D. 222).

The definition of general power for this purpose is not confined to direct powers but covers also cases where the appointor under a special power is himself an object. In these circumstances the appointor can validly appoint in favour of himself (see *Re Penrose, Penrose* v. *Penrose*, [1933] 1 Ch. 793). In the course of his judgment in this case, Luxmoore, J., said at p. 807: "The donee of a power who can freely appoint the whole of the fund to himself and so acquire the right to dispose of the fund in accordance with his own volition is, in my judgment, competent to dispose of that fund as he thinks fit and it can make no difference that this can only be done by two steps instead of by one—namely, by an appointment to himself, followed by a subsequent gift or disposition, instead of by a direct appointment to the object or objects of his bounty. If under a power a donee can make the whole of the property subject to it his own he can by exercising the power in his own favour place himself in a position to dispose of it as he thinks fit". In cases where the power is exercisable only with the consent of a third party, the question of classification arises. It has been stated that "a power to appoint generally but with the consent of Y will be general or special for the purpose of the perpetuity rule, according to whether on the true construction Y has merely a bare veto on an appointment, or is under a duty to consider, the beneficial interests which X proposes to appoint and the interests of those who take in default of appointment (*Re Dilke*, [1921] 1 Ch. 34; *Re Phillips*, [1931] 1 Ch. 347; if he has such a duty the power is special: *Re Watts*, [1931] 2 Ch. 302)" (*e*). Where the power is qualified, *e.g.*, a power to appoint in favour of anyone except a named person, it can become general if that named person dies in the lifetime of the appointor (see *Re Byron's Settlement, Williams* v. *Mitchell*, [1891] 3 Ch. 474). In this case, Kekewich, J., said at p. 480: "I do not see why a power to appoint to all the world except A, B and C, may not be a power to appoint to all the world if, when the power comes to be exercised, A, B and C are dead". In such a case it would seem necessary, when the power is exercised, to examine it in that light as the predecease or survival of the excepted person or persons would affect the duties payable. Where a qualified power is in the form of a power to appoint to anyone other than the appointor and the latter is free to appoint by will, he would seem to be competent to dispose of the property at his death whatever may have been the position in his life-

(*e*) Key & Elphinstone's Precedents in Conveyancing, 14th ed., vol. 2, p. 1049.

time. It will be seen that the classification of powers is by no means simple for estate duty purposes. By way of summary, however, it is suggested that the position can be stated now in the following way. A deceased person is competent to dispose at his death of property in which he had a general power within the meaning of the Finance Act, 1894, s. 22 (2) (a), as explained above, but if he had only a qualified power he would not be competent to dispose unless such power by reason of its form (*e.g.*, a power for A to appoint to anyone other than himself) or the events which have happened (*i.e.*, by the predecease of excepted persons) can be regarded as being general at the time of his death.

Translating the above observations into terms of death duties, the importance of correct classification of powers lies in the fact that competency to dispose is the criterion for determining (*inter alia*) whether property is " deemed to pass " on a death as, if it is, then liability for estate duty arises (Finance Act, 1894, s. 2 (1) (a)). Furthermore, it determines whether the exemption from that duty applies on the death of a surviving spouse under the Finance Act, 1914, s. 14. If the latter was competent to dispose there is no exemption and this point should be borne in mind by the draftsman of the will of a family man. In most cases if a life interest coupled with a power of appointment is desired for the surviving spouse, a special power will meet the testator's wishes and preserve his estate from a second payment of estate duty on the determination of the surviving spouse's life interest whereas a general power will prevent such benefit. Lastly, competency to dispose determines whether the executors or other parties are accountable for estate duty. The executors are liable for the duty on the whole of the personalty, wherever situate, of which the deceased was competent to dispose (Finance Act, 1894, ss. 6 (2) and 8 (3). Since 1925, of course, the executors are also liable for the duty on the deceased's land in England and Wales (Law of Property Act, 1925, s. 16 (1), but the beneficiary is also liable. In all other cases, the beneficiary or trustee who received the property on the death is liable for the duty (Finance Act, 1894, s. 8 (4)). In this connection, it may be mentioned that the House of Lords decided in *Re O'Grady, O'Grady* v. *Wilmot*, [1916] 2 A. C. 231, that personalty over which the deceased had, and exercised, a general power of appointment, did not pass to the executor as such and, therefore, the appointee must bear the duty himself although in that event, the executor has to pay it in the first place since the deceased was competent to dispose and he must recover it from the appointee (Finance Act, 1894, s. 6 (2)).

(2) LEGACY DUTY.

The Legacy Duty Act, 1796, s. 18, refers to " any power of appointment to or for the benefit of any person or persons specially named or described as objects of such power ". The division of powers for purposes of legacy duty is between the class of power thus described, or special power as it may be called for brevity's sake, and the general power. It is very material in determining the rate of duty applicable in a given case since that depends on the appointee's degree of relationship to the predecessor or person from whom the legacy is deemed to

come. If the appointor had a special power, the settlor is the predecessor, but if the appointor had a general power then he is the predecessor. It has been observed that the Legacy Duty Act. 1796, "uses language which implies that for the purposes of that Act, the two classes of power, special and general, were meant to include all possible cases", but this is not how it has been interpreted, as the leading case next cited below clearly shows (*f*). The meaning of general power in this context requires special consideration as it has been recognised that its meaning is not the same as for the purposes of estate duty (*g*). It appears to mean any power in which the objects are not specifically named or described and to include a power to appoint in favour of anyone except certain specially named or described persons (see *Drake* v. *Att.-Gen.* (1843), 10 Cl. & F. 257). The power in this case can be classified as a qualified power. For this reason it has been stated that general power has a wider meaning for legacy duty than it has for estate duty. Since there need be no hesitancy in acknowledging a tripartite division of powers, it seems possible now to refrain from complicating the definition of general power in this connection and defining it in different ways according to the particular context. Instead, it is suggested that it is possible now to affirm that the division of powers for the purposes of legacy duty is between special powers on the one side and general and qualified powers on the other.

(3) Succession Duty.

In the Succession Duty Act, 1853, s. 4, it is provided that "where any person shall have a "limited power of appointment" under a disposition "taking effect" upon any death, any person taking property by the exercise of such a power shall be deemed to take as a succession derived from the person creating the power as predecessor. This provision was made presumably to make it clear that in such a case the special rule explained below relating to general powers does not apply. Hitherto the division of powers for succession duty has been into general and "limited" powers. So far as definitions are concerned, the meaning of general power in this context is regarded as similar to its meaning for estate duty (*h*). It seems that the qualified power can be equated safely with the "limited" or special power. On this assumption it is suggested that the division of powers for succession duty is now into "limited" including qualified powers on the one side and general powers on the other. The correct classification is material for the following reason. In the case of a "limited" power, the settlor is the predecessor for the purposes of succession duty whether the appointment is by will or deed. The position in the case of a general power is different and there is a further sub-division of the problem. Briefly, the effect of section 4 of the Succession Duty Act, 1853, is that in the case of a general power "taking effect" upon a death, the appointee takes from the appointor (not the settlor) as the predecessor, but the effect of section 2 of the same Act is that in any other case the appointee takes from the settlor as the predecessor. The

(*f*) Jarman on Wills, 3rd ed., p. 768.
(*g*) Green, Death Duties, p. 273.
(*h*) Green, Death Duties, p. 312.

expression "taking effect" refers to the power and not to the disposition of the property and means exercisable (*Re Lovelace* (1859), 4 De G. & J. 340). As in legacy duty, the relationship of the beneficiary to the predecessor determines the rate of succession duty applicable. The importance of the correct classification of powers as determining the predecessor is thus shown also in succession duty.

The decision in *Re Jones, supra*, and the point which it confirmed is not, therefore, without interest and relevancy in connection with the death duties. In conclusion, it may not be out of place to offer the remark that sometimes a Revenue decision plays an important part in the evolution of general law, *e.g.*, the recent decision of the Court of Appeal in *Inland Revenue Commissioners* v. *National Anti-Vivisection Society*, [1946] 1 K. B. 185. In this case the Court, by a majority, refused to allow the claim for exemption from income tax granted to charitable trusts under the Income Tax Act, 1918, s. 37, made by trustees of a trust for anti-vivisection purposes and did not follow earlier well-thought-of decisions pertaining to the law of charities. By way of contrast in the case of *Re Jones, supra*, an example is furnished of a decision taken from the Chancery Reports which seems to be not only of importance in the evolution of general property law but one which merits the attention of those concerned with Revenue law and practice.

PLANNING: THREE MATTERS CONCERNING INTERIM DEVELOPMENT.

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The making of planning schemes under the Town and Country Planning Act, 1932, appears to be a problem of ever increasing complexity with the result that the interim period which is bound to elapse between the date when the relevant planning resolution becomes operative and the subsequent date when the planning scheme itself finally comes into operation is a period which tends to increase rather than shorten, notwithstanding exhortations emanating from official quarters about the need for speed in planning. Any development of land during that interim period is known as "interim development" by virtue of section 10 (1) of the Town and Country Planning Act, 1932, and is now subject to very strict control by the joint effect of the said section 10 and the respective provisions of the Town and Country Planning (Interim Development) Act, 1943, and the Town and Country Planning (General Interim Development) Order, 1946. It will be remembered by those interested in the development of land that in connection with interim development and planning generally *development* includes, by section 53 of the Town and Country Planning Act, 1932, not merely development as that expression is popularly understood, that is to say, building operations or rebuilding operations, but also any *use* of land or any building for a purpose which is different from the purpose for which the land or building was last being used.

In this article it is proposed to deal with three matters affecting interim development of land which have come into prominence and assumed especial importance in recent months.

1. As to Temporary Consents to Interim Development.

Every time an application for consent to interim development under section 10 (3) of the Town and Country Planning Act, 1932, is made to an interim development authority, the authority in determining how to deal with the application will undoubtedly have one eye on the possibility of compensation having to be paid under section 18 of the 1932 Act if it is later found, when the relevant planning scheme ultimately comes into force, that the responsible authority under that scheme has to take action under section 13 of the 1932 Act by reason of the fact that the interim development for which the consent of the interim development authority was sought has turned out to be development which conflicts with the provisions of the operative planning scheme. An interim development authority will, accordingly, be on its guard against granting consents to interim development too readily. On the other hand, it may be perfectly obvious that there is no reason why the particular type of interim development for which consent is sought should not be allowed to go forward *for a limited period.* It was to meet this very point that section 3 of the Town and Country Planning (Interim Development) Act, 1943, made provision for temporary consents to interim development. The section removes all doubt as to whether consent to interim development could lawfully be granted for a limited period of time and now empowers an interim development authority, on receiving an application for consent to interim development, to grant the application for such limited period of time as the authority thinks fit. At the end of that limited period of time the development in question, if it continues to remain in being, will assume the character of development carried out during the interim period but without the consent of the appropriate interim development authority. The result will be that if the relevant planning scheme is not yet in force when the temporary consent comes to an end, the interim development authority itself will be able to take action under section 5 of the Town and Country Planning (Interim Development) Act, 1943, towards bringing about a removal or termination of the development. If, however, the relevant planning scheme has come into operation by the time when the temporary consent comes to an end, it will be the responsible authority under that scheme which will be able to take action under section 13 of the Town and Country Planning Act, 1932, towards bringing about such removal or termination of the development. Whether the aforementioned action be taken by the interim development authority or by the responsible authority it will be able to be taken without payment of any additional compensation based on the fact that the development in question was originally interim development carried out with the consent of the appropriate interim development authority.

There is no doubt that section 3 of the Town and Country Planning (Interim Development) Act, 1943, can be most helpful to an interim development authority by removing very largely the chances of compensation having to be paid for interference, when the relevant planning scheme ultimately comes into operation, with development consent to

which has been granted for a limited period only. This is very satisfactory from the interim development authority's point of view, but in all fairness there is to be considered the point of view of the actual developer, and in planning with one eye on the chances of avoiding payment of compensation in the *future*, it is submitted that it is advisable for the interim development authority to keep the other eye on the *present* and the need to encourage development in all proper cases. It may be a long time before the relevant planning scheme will come into operation and in the meantime developers of land and, indeed, interim development authorities themselves, have to live. In its zeal to avoid subsequent liabilities for the payment of compensation an interim development authority may be tempted to make too harsh a use of section 3 of the 1943 Act by habitually imposing on its consents to interim development limitations of time which are all too uniform in character.

Putting the future aside for a moment it is well to remember, in the interests of the present, that no man who receives a consent to interim development involving the erection of buildings but which consent is limited to, say, seven years, is going to put into his building such work, materials and expenditure as he would do if the building had not been given, in effect, a limited life. On the contrary, if the period of his grant of consent to interim development is limited to seven years he is likely to build the flimsiest type of building which it is possible to get sanctioned under the local by-laws. Thus, to put the matter shortly, if an interim development authority adopts the habit of regularly giving interim development consent limited to, say, seven years, it will be effectively cutting down the chances of having to pay compensation in the future when the relevant planning scheme comes into force if the development is then found to conflict with the scheme, but, in the meantime (and it should be remembered it may be a very long "meantime"), it is encouraging within its area and in all its forms a type of development which is popularly called "jerry-building". In such circumstances the immediate damage to local amenities will be great and the fault will lie not so much with the jerry-builder as with the interim development authority for making unwise use of the powers conferred upon it by section 3 of the Town and Country Planning (Interim Development) Act, 1943.

The carrying into effect of planning schemes and the re-development of the area of any authority in conformity therewith will have to proceed in stages and cannot be undertaken as a whole at any particular point of time. What is clearly required is for planning authorities and interim development authorities acting together to draw up a list of districts setting out the order in which the various sections of their entire areas will be dealt with by way of re-development in accordance with planning schemes as and when they come into operation. If this course of procedure is adopted it may well be possible for an interim development authority to give temporary consents to interim development for as long as twenty-five years, although in other instances it may be advisable to limit consents to as short a period as five years. In this way better building will be encouraged in those particular sections of an authority's area which are not likely to be subject to re-development treatment for many years, whilst, on the

other hand, those sections now ripe and in urgent need of re-development as soon as circumstances permit will be able to be re-developed without great sums having to be paid by way of compensation in respect of interference with development which has taken place within such sections during the interim period.

What an interim development authority should avoid entirely is limiting its consents to interim development to the figure of say seven years irrespective of the location of the land on which it is sought to carry out any particular development. As has been said, section 3 of the Town and Country Planning (Interim Development) Act, 1943, is a very helpful and useful provision from the interim development authority's point of view, but it should be administered in such a fashion that it does not place undue and unnecessary obstacles in the way of *bona fide* developers honestly intent on doing a good job of work.

2. As to Resumption of Former Use of Property After Temporary Discontinuance Owing to War Circumstances.

Many buildings are now coming to be used once again by their owners for the purposes for which they were in use before the outbreak of war in 1939 after having been used during the war years either for no purpose at all (having been lying empty and idle) or for a purpose different from that for which they were used before the outbreak of war. It is specially to be emphasised that a change of user may in certain circumstances, by virtue of section 53 of the Town and Country Planning Act, 1932, constitute "development" within the meaning of that Act, because it is felt that not every owner of property now putting his property back again to its pre-war use will realise that he may be carrying out the "development" of that property and may require certain consents before doing so. An owner may be forgiven for thinking that he can commence once more to use his property as in 1939 without let or hindrance. By virtue of the laws of planning, however, this is not necessarily the case to-day. In certain circumstances he may need to get the consent of an interim development authority.

Whether such consent is needed or not depends on whether, in resuming the pre-war use of his building after its temporary war-time discontinuance, the owner can be said to be continuing an existing use of the building. It is, accordingly, necessary to consider the definition of "existing use" in section 53 of the Town and Country Planning Act, 1932, which provides as follows:—

> "Existing use" means, in relation to any building or land, a use of that building or land for any purpose of the same or a similar character to that for which it was last used before the material date, or, in the case of a newly erected building which has not been used before that date, a use for any purpose for which it was designed, and includes in any case any use of a building or land permitted by or under an interim development order, whether made under this Act or any Act repealed by this Act:
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> Provided that—
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> (i) if at any time after the material date the existing use of a building is discontinued for a period of eighteen

months, no use of that building at any subsequent date shall be deemed to be an existing use thereof;

(The second proviso to this definition is not relevant for the purposes of this article and the expression "material date" used in the definition means, so far as the point now under consideration is concerned, the date when the resolution to prepare the relevant planning scheme took effect by virtue of section 6 (2) of the Town and Country Planning Act, 1932, or section 1 (1) of the Town and Country Planning (Interim Development) Act, 1943, as the case might be.)

It follows from this definition of "existing use" that although the pre-war use of a building can be called an "existing use", if it is discontinued for a period of eighteen months then any subsequent use of the building, even for its pre-war purposes, will not be an "existing use" of the building under the 1932 Act and, accordingly, any resumption, during a period of interim development, of the pre-war use of the building will need to be the subject of consent granted by the appropriate interim development authority. If such consent is not obtained action to terminate the use can be taken by the interim development authority under section 5 of the Town and Country Planning (Interim Development) Act, 1943. Moreover, when the relevant planning scheme ultimately comes into force, interference with the use could be undertaken without, by virtue of section 20 (2) of the Town and Country Planning Act, 1932, payment of compensation under section 18 (1) (*b*) of the Act, by the responsible authority under the scheme acting in pursuance of its powers for enforcing the scheme contained in section 13 of the Act.

The recent war, however, has frequently been responsible for the discontinuance of existing uses for periods exceeding eighteen months, such discontinuance being entirely beyond the control of those who formerly enjoyed the benefit of such uses. The Legislature has felt it right to provide that in certain, *but not all*, circumstances where the war has been responsible for such discontinuance of an existing use, the resumption of the use shall be regarded as a continuation of the existing use which was being enjoyed when the war broke out, notwithstanding that the period of discontinuance has exceeded eighteen months. The appropriate provisions in this behalf are to be found in section 45 (3) of the Town and Country Planning Act, 1944, which provides that no account is to be taken for the purposes of proviso (i) to the definition of "existing use" in section 53 of the Town and Country Planning Act, 1932, of any time during which the resumption of the existing use of a building has been prevented at any time during "the war period" (*i.e.*, the period beginning September 3, 1939, and ending with the expiration of the Emergency Powers (Defence) Act, 1939, on the 24th day of February, 1946)—

(a) by reason of the occurrence to the building of war damage;

(b) by reason of possession of the building having been taken in the exercise or purported exercise of emergency powers, or by an authority by whom, at a time at which, and for a purpose for which, possession of the building could have been so taken;

(c) in consequence of any arrangement for the concentration of production approved, or of any order for that purpose made,

by the Board of Trade in the exercise or purported exercise of such powers;

(d) by reason of the entry of the occupier of the building into whole-time service in the armed forces of the Crown or in the merchant navy or the mercantile marine or in a civil defence force within the meaning of the National Service Acts, 1939 to 1942, or, in the case of a woman, in any of the capacities mentioned in the First Schedule to the Reinstatement in Civil Employment Act, 1944; or

(e) by reason of such other circumstances as may be prescribed.

Thus, if the use of a building before the outbreak of war was an existing use and has been discontinued for a period exceeding eighteen months by reason of any of the matters set out in paragraphs (a), (b), (c), (d) or (e) above, then, on being now resumed, the use will continue to be an existing use and the person who is responsible for its resumption will not need to obtain the consent of any interim development authority.

The precise extent of the important benefits conferred by paragraphs (a) to (e) of section 45 of the 1944 Act should be carefully noted. In this connection it may be mentioned that so far the Minister has not prescribed any " other circumstances " under paragraph (e), and it is to be specially mentioned that whilst a variety of matters are covered in paragraph (d) the frequently-found case where an existing use of a building has been discontinued during the war period owing to the difficulties of obtaining supplies is *not* covered. For example, during the war premises may have ceased to be used for the purposes of a petrol filling station, owing to the inability of the owner of the premises to obtain petrol or owing, perhaps, to the fact that it was no longer an economic proposition to sell petrol, having regard to the exceptionally limited number of motor vehicles likely to refuel at the premises, with the result that the owner of the premises found it advisable to " shut up shop " for the duration. If the " shop " has been thus shut for more than eighteen months and is now sought to be opened once more as a petrol filling station the consent of the appropriate interim development authority will be required. The provisions of paragraph (d), wide though they are, are not wide enough to cover such a case.

Paragraph (d) of section 45 (3) of the 1944 Act is not by any means self-explanatory and for a fuller understanding of its provisions two matters may be mentioned here. Firstly, " a civil defence force within the meaning of the National Service Acts, 1939 to 1942 ", means, by section 12 (1) of the National Service Act, 1941, " the police war reserve and any organisation which is declared by order of the Minister of Home Security to be a civil organisation established for forestalling or mitigating attacks by the enemy and to be a civil defence force for the purposes of this Act ". The following organisations have been declared by order to be civil defence forces for the purposes of the National Service Act, 1941 :—

(i) The Auxiliary Fire Service (see, The National Service (Civil Defence Force) Order, 1941, S. R. & O., 1941, No. 775);

(ii) The National Fire Service (see, The National Fire Service (General) Regulations, 1941, S. R. & O., 1941, No. 1134, regulation 10 (1)); and

(iii) The Civil Defence Reserve (see, The National Service (Civil Defence Force) (No. 2) Order, 1941, S. R. & O., 1941, No. 1567).

Secondly, "the capacities mentioned in the First Schedule to the Reinstatement in Civil Employment Act, 1944", are:—

(i) Member of Queen Alexandra's Royal Naval Nursing Service or any reserve thereof;

(ii) Member of the Women's Royal Naval Service;

(iii) Woman medical practitioner serving in the Royal Navy or any naval reserve;

(iv) Member of Queen Alexandra's Imperial Military Nursing Service or any reserve thereof;

(v) Member of the Territorial Army Nursing Service or any reserve thereof;

(vi) Member of the Auxiliary Territorial Service;

(vii) Woman employed with the Royal Army Medical Corps or the Army Dental Corps with relative rank as an officer;

(viii) Member of Princess Mary's Royal Air Force Nursing Service or any reserve thereof;

(ix) Member of the Women's Auxiliary Air Force;

(x) Woman employed with the Medical Branch or the Dental Branch of the Royal Air Force with relative rank as an officer; and

(xi) Member of the Voluntary Aid Detachments employed under the Admiralty, Army Council or Air Council.

3. As to Interim Development Control Over Advertisements.

According to section 1 of the Town and Country Planning Act, 1932, one of the objects with which a planning scheme may be made is for the purpose of "securing . . . amenity". From this it follows that a planning scheme may well seek to control the indiscriminate exhibiting of advertisements. It must be remembered, however, that advertisements are dealt with specifically in section 47 of the 1932 Act and by that section are placed in a specially favoured position. Under section 47 land may be specified in a planning scheme as land protected in respect of advertisements, and if this is done by a planning authority when making the scheme, the responsible authority under the scheme when it ultimately comes into operation may require the removal of "an advertisement displayed or a hoarding set up" if either the advertisement or the hoarding "seriously injures" the amenity of land specified in the scheme as land protected in respect of advertisements. Section 47 (8) provides that "save as provided by this section, a scheme shall not contain any provisions prohibiting or dealing with the erection or use of structures for the purpose of advertising".

It is to be observed that the provisions of section 47 (1) only come into operation when a planning scheme *has come into force*, that is to say, the provisions do not operate during the interim period which elapses before the scheme comes into force. Accordingly, there has

been much speculation as to the amount of control which can be exercised by an interim development authority in the case of an advertisement displayed or a hoarding set up *during the interim period.*

An interim development authority frequently finds that during a period of interim development the owner of a building has allowed the gable of the building to be used for purposes of displaying advertisements. When this happens the first question which arises is whether any such use of a gable can be called " development " at all within the meaning of the Town and Country Planning Act, 1932. It is submitted that by virtue of the definition of " development " in section 53 of that Act such use does constitute development by reason of the change of user which occurs. The gable of the building was formerly used for no purpose other than that of supporting the building of which it forms part. That was its purpose and its use. When it has an advertisement placed upon it the gable acquires an entirely new use, that is to say, it commences to be used for the purpose of exhibiting advertisements *in addition* to its original and principal use which was, and which continues to be, to support the building. Thus the owner, by allowing the gable of the building to be used for advertising purposes, has, it is submitted, carried out " development " of the building.

In a case where such development has been carried out during a period of interim development and without the consent of the appropriate interim development authority, there has been much thought as to whether, having regard to the provisions of s. 47 of the Town and Country Planning Act, 1932, the interim development authority could take action under section 5 of the Town and Country Planning (Interim Development) Act, 1943, to prohibit the use of the gable for advertising purposes. It has now been settled by a King's Bench Divisional Court in *Mills and Rockleys, Ltd.* v. *Leicester Corporation,* [1946] 110 J. P. 136, that such action cannot be taken.

In this case the Leicester Corporation, having passed a resolution that certain areas were proposed to be protected in respect of advertisements in a planning scheme in course of preparation under the Town and Country Planning Act, 1932, resolved to make an Order under section 5 of the Town and Country Planning (Interim Development) Act, 1943, prohibiting the use of the external wall of a dwelling-house in one of such areas for advertising purposes, contending that their powers as interim development authority under section 5 of the Act of 1943 were not limited by section 47 of the Act of 1932. It was held that as there was nothing in the Act of 1943 which cut down the emphatic provision contained in section 47 (8) of the Act of 1932 against the inclusion in a planning scheme of any provision prohibiting or controlling the use of structures for the purpose of advertising, the proposed Order of the Leicester Corporation was invalid.

This is an interesting and important decision both from the point of view of interim development authorities and property owners having buildings suitable for use for advertising purposes. Lord Goddard, L.C.J., in the course of his judgment, observed, at p. 138, after having quoted the provisions of section 47 (8) of the 1932 Act : " Those words seem to make it as clear as any words can that Parliament has chosen to put advertising spaces or sites in a peculiarly favourable position, and has said that a scheme which a town planning authority prepares

is not to interfere with the use of structures for the purpose of advertising or with advertising stations. That is, no doubt, a very valuable privilege which is given to advertising, but Parliament has seen fit, for good reasons, to make such a provision, and it may be that they considered sufficient protection was given to the neighbourhood by the powers of the local authority to object to particular advertisements when they were put up and also by their power to impose certain conditions with regard to the use of advertising stations. Except for the provisions which are contained in the earlier sub-section ", (this is a reference to section 47 (1) of the 1932 Act), " it is clear that the scheme must not contain a provision which prohibits or controls, otherwise than is provided in the section, the erection or use of structures for advertising. That is exactly what the interim scheme in this case does. It prohibits the use of this wall as an advertising station. When I turn to the Act of 1943, I can find nothing which refers to section 47 of the Act of 1932, or cuts down or limits the emphatic prohibition which sub-section (8) contains. . . . Part of section 5 (1) [of the 1943 Act] enables the authority, ' where the development consists of any use of the land or any building thereon, by order ' to ' prohibit that use, and, where necessary, reinstate the land ', which is what has been done here. The authority has prohibited the use of this wall for advertising purposes, but there is nothing in section 5 of the Act of 1943 which affects section 47 of the Act of 1932, and, accordingly, it follows that any interim scheme which the town planning authority may prepare—which will be an interim scheme under this Act of 1943—must not ' contain any provision prohibiting or controlling the erection or use of structures for the purpose of advertising '. It is useless to inquire why that special protection is given to advertising. The statute clearly gives it, and if the scheme does prohibit something which the statute says shall not be prohibited it follows that the owner has a right to complain to the Court and ask that the order shall be set aside ".

Mr. Justice Henn Collins, in the course of his judgment observed at p. 140 : " The first and fundamental question is whether the Act of 1943 has enlarged the ambit of schemes, or the powers to make schemes, in respect of advertisements beyond the provisions of the principal Act of 1932. The Act of 1943 provides, by the interpretation section, section 14 (3) : ' Any reference in this Act to the principal Act '—that is, the Act of 1932—' shall be construed as a reference to that Act . . . as amended by . . . this Act '. There is no express amendment in the 1943 Act of the 1932 Act with regard to advertisements, and, therefore, *prima facie* when the two Acts are to be read together the governing Act is the principal Act ".

It follows from this decision that notwithstanding the new powers with respect to the enforcement of the interim development control of land granted to interim development authorities by the Town and Country Planning (Interim Development) Act, 1943, the position with respect to the control of advertisements is still as dealt with in section 47 of the Act of 1932, the powers conferred by which can not be utilised by interim development authorities at all but only by responsible authorities acting under the provisions of operative planning schemes. In short, the result of this decision is that interim development control

of advertisements under the 1943 Act by an interim development authority acting as such does not exist.

In conclusion it is worthy of note (though of purely incidental interest in this article) that in his judgment in the above-mentioned case, the Lord Chief Justice is reported as saying at p. 140 : " I called attention in the course of the argument to another prohibition which is contained in the [1932] Act, namely, section 12 (3), which prevents a scheme applying to agricultural land. There are, therefore, at any rate, two things which the Act says are not to be included in a scheme—agricultural land and advertising stations ". So far as this *dictum* relates to agricultural land it will be as well for owners of such land to bear in mind the provisions of section 41 of the Town and Country Planning Act, 1944, to which the attention of the Lord Chief Justice was perhaps not drawn and which now make it possible for the provisions of a planning scheme with respect to buildings to be made applicable to agricultural buildings by enacting that section 12 (3) of the 1932 Act, quoted by the Lord Chief Justice, *shall cease to have effect*.

FURNISHED HOUSES (RENT CONTROL) ACT, 1946.

By Lionel A. Blundell, LL.M., Barrister-at-Law.

The object of the Furnished Houses (Rent Control) Act, 1946 (9 & 10 Geo. 6, c. 34), is expressed in the preamble to the Act as being " to make provision with respect to the rent of houses or parts thereof let at a rent which includes payment for the use of furniture or for services ". This is effected by means of a set of provisions modelled on those which have already been tried out in Scotland under the Rent of Furnished Houses Control (Scotland) Act, 1943, although going beyond the Scottish Act in some respects. The main feature of the scheme is that, instead of stabilising the rent at that which was being paid at an arbitrarily fixed date, as in the case of unfurnished dwellings controlled under the Rent Restrictions Acts of 1920 to 1939, a machinery is set up for assessing a fair rent for each individual furnished letting submitted for consideration under the new Act. Where the new Act is invoked, the old law applying a certain measure of control to furnished rentals under the Rent Restrictions Acts of 1920 to 1939 is superseded; the effect of this will be discussed more fully below.

Application of the 1946 Act.

The new Act is limited in its application as regards duration, geographical extent and subject-matter.

By section 13 (3) it is to continue in force until December 31, 1947. It should be noted that the Scottish Act is, by virtue of the Emergency Laws (Transitional Provisions) Act, 1946, to continue until the same date. It would be unwise to assume that the two Acts will then be allowed to lapse.

By section 13 (2) the Act does not extend to Scotland (which as we have seen has its own Act on the subject) or to Northern Ireland.

It does not automatically apply, however, everywhere in England and Wales. It only applies as respects those districts specified and from the dates specified in Orders of the Minister of Health (who is "the Minister" for all purposes of the Act); such Orders will be made after representation by or consultation with the local authority (section 1 (1)). It is believed that a large number of local authorities have already requested that the Act be applied in their districts.

The contracts of letting to which the Act of 1946 applies are by section 2 (1) those whereby one person (called in the Act the "lessor") grants to another person (called in the Act the "lessee") the right to occupy as a residence a house or part of a house situated in a district in which the Act is in force in consideration of a rent which includes payment for the use of furniture or for services, whether or not, in the case of such a contract with regard to part of a house, the lessee is entitled, in addition to exclusive occupation thereof, to the use in common with any other person of other rooms or accommodation in the house. This definition seems intended to include within its scope lettings of furnished rooms coupled with sharing of, say, a kitchen. It is pointed out, however, that the part of the house of which the lessee is granted exclusive occupation has to be the subject of a "right to occupy as a residence", and so it may be that the Act can only be invoked where the rooms of which the lessee has exclusive occupation can be said to constitute a "residence" without taking into account the additional accommodation which is shared. Although the decision in *Neale* v. *del Soto*, [1945] K. B. 144, does not in terms apply under the new Act, being based as it is on the question what accommodation in a house can constitute a "separate dwelling", a somewhat similar question may arise under the new Act as to what is occupied "as a residence". To take an extreme example, if a person is granted the right to share with another person a furnished bedroom, a furnished living room and a furnished kitchen, without exclusive occupation of any room at all, his contract does not seem to be within the Act, for his sharing rights are not "in addition to" exclusive occupation of any part of the house. This seems to be the effect of the section, but it cannot be said to be free from doubt, for if the section had said nothing at all on the subject of sharing "in addition to" exclusive occupation of part of a house, it would have seemed to be arguable that such a contract as that suggested above did grant a right to occupy part of a house "as a residence". Can "a residence" consist entirely of shared accommodation? It is to be noted that section 2 (1) avoids the use of the word "letting", which would have carried with it the notion of exclusive occupation. The reader is left with this as one of the interesting points for consideration which arise out of this Act.

It would appear that the rent includes a payment for the use of furniture or for services if any portion of the rent, however small, is in respect of the use of furniture or services; but the principle laid down in *Michael* v. *Phillips*, [1924] 1 K. B. 16, upon the construction of similar words in the earlier Acts would seem to come into operation, and in order that the Act should apply the furniture or services must be such as the landlord is by the terms of the letting under a contractual obligation to provide. The Act does not contain any definition of the word "furniture". Presumably this word is, as in

the Rent Restrictions Acts, to be given its ordinary popular meaning—see *Gray* v. *Fidler*, [1943] K. B. 694. There is a special definition of the word " services "—an inclusive, not an exclusive definition—in section 12 (1), which provides that " services " includes attendance, the provision of heating or lighting, the supply of hot water and any other privilege or facility connected with the occupancy of a house or part of a house, not being a privilege or facility requisite for the purposes of access, cold water supply or sanitary accommodation. Since the word " services " in the new Act is given a much wider meaning than the word " attendance " in the Acts of 1920–39, it follows that a letting which is within the new Act by reason of the rent including payment in respect of " services " may at the same time fall within the Acts of 1920 to 1939 if those services consist of something other than " attendance ".

The Act makes express provision in section 12 (2) for the case where a separate sum is reserved for the use of furniture and for services, distinct from the sum reserved for the occupation of the premises : in such case the expression " rent " means the aggregate of those sums, and if they are payable under separate contracts the Act treats those contracts as one contract.

Nothing in the Act applies to a house or part of a house let at a rent which includes payment in respect of board (section 12 (3)). It is expressly provided that a house or part of a house shall not be deemed to be let at such a rent unless the value of such board to the lessee forms a substantial proportion of the whole rent. This seems to leave the difficult question what is a " substantial proportion " for decision in each individual case, as in the corresponding cases under the Rent Restrictions Acts which turn on the question whether a " substantial portion " of the whole rent is in respect of the use of furniture. If the word " substantial " is given the same meaning in the new Act as in the earlier Acts, then not very much board will be needed to take a letting out of the new Act. Is any subtle change of meaning effected however by the alteration of the word " portion " in the earlier legislation to " proportion " in the new Act?

As an encouragement to householders to make rooms available for letting under Defence Regulation 68CB—a provision, designed to ameliorate the housing shortage, which has proved singularly unpopular—it is provided by section 12 (4) that the 1946 Act will not apply to accommodation registered under that Regulation and let on the registered terms and conditions.

Tribunals.

For each district to which the Act applies there will be a tribunal (if the Minister so directs the same tribunal may act for more than one district). Each tribunal consists of a chairman and two other members, all appointed by the Minister, paid (see the Schedule to the Act) and holding office during the pleasure of the Minister (regulation 3 of the Regulations under the Act). Each tribunal may appoint a clerk and, with the approval of the Minister as to numbers, such other officers and servants as they think fit; their remuneration is determined by the Minister, with Treasury consent. The Minister has indicated in his explanatory memorandum that while chairmen and

other members of tribunals should be independent of the local authority, employees of the local authority may well act as clerks or other servants of the tribunal.

PROCEDURE ON REFERENCE OF CONTRACT TO TRIBUNAL.

Either party to the contract or the local authority may refer the contract to the tribunal for the district. Amongst matters for which the Minister has provided by regulations under the Act, he has laid down in detail the procedure for referring a contract to the tribunal.

The reference must be by written notice, specifying the address of the house or part, the names of the lessor and lessee and the address of the lessor (regulation 4). The notice may be delivered at an office of the tribunal, in which case it is deemed to have reached the tribunal on the day when it is so delivered; or it may be posted to the tribunal, in which case it is deemed to have reached the tribunal on the day when it would be delivered in the ordinary course of post. The precise day on which a reference to a tribunal is considered to have been made is of importance in relation to the provision, considered below, placing a restriction on notices to quit served after reference to a tribunal.

The tribunal can refuse, under section 2 (6), to entertain a reference made otherwise than by a local authority if they are satisfied, having regard to the length of time elapsing since a previous reference made by the same party or to other circumstances, that the reference is frivolous or vexatious. Otherwise they will give notice to each party allowing not less than seven days for notifying the clerk of the tribunal that the party desires to be heard or to submit representations in writing (regulation 5). If any party notifies the clerk that he desires to be heard the tribunal is to give each party not less than seven clear days' notice in writing of the time and place of hearing (regulation 6). If the general management of the house is vested in and exercisable by the local authority as housing authority, that authority will be given an opportunity of being heard or of submitting representations in writing (section 2 (2) and regulation 6).

At any hearing a party may appear in person or by counsel or solicitor or by any other representative or may be accompanied by any person whom he may wish to assist him (regulation 7).

In other respects the tribunal may determine their own procedure. At the request of either party they must, unless for some special reason they consider it undesirable, allow the hearing to be held in public; and the tribunal may always adopt this course if they think fit (regulation 8). Hearings may be adjourned or postponed (*ib.*). The tribunal act by a majority decision, given in writing and signed by the chairman and sent as soon as may be to the local authority (regulation 9). Notices sent by a tribunal may be sent by ordinary prepaid post addressed to the party intended at his usual or last known address (regulation 10). A reference to a tribunal may be withdrawn (section 2 (2)).

POWERS OF TRIBUNAL UPON REFERENCE.

Before adjudicating on a case the tribunal can serve a notice on the lessor requiring him to give them (and allowing him not less than seven days for this) such information as they may reasonably require

regarding such of the "prescribed particulars" relating to the contract as are specified in the notice (section 2 (1)). The "prescribed particulars" for this purpose are set out in the First Schedule to the regulations, and cover a very wide field. It is an offence to fail to comply with such a notice, and the penalty may under section 9 (2) be a fine of £20 or three months' imprisonment or both.

When the tribunal have considered a contract referred to them and made such inquiry as they think fit, giving each party an opportunity of being heard or submitting representations in writing, they may under section 2 (2)—

(a) approve the rent payable under the contract, or
(b) reduce it to such sum as they may, in all the circumstances, think reasonable, or
(c) dismiss the reference.

Apart from one special case which will be mentioned below in connection with charges for services, the tribunal cannot *increase* the rent upon the first reference of a contract to them. If it appears that the lessor is actually charging a smaller rent than he would be justified in charging, then the proper order for the lessor to ask for, in view of the provisions, mentioned below for registering approved rents, would be for the reference to be dismissed.

If, after a rent has once been approved or reduced by the tribunal, there is a change of circumstances, either the lessor or the lessee or the local authority may refer the case to the tribunal for reconsideration, and on such reconsideration the tribunal have the same powers as on a first reference but may alternatively *increase* the rent payable (section 2 (3)).

Any approval, reduction or increase of rent under section 2 of the Act may by sub-section (5) be limited to rent payable in respect of a particular period.

Register of Rents.

The local authority is required by section 3 (1) of the Act to keep a register of rents, which is by regulation 12 open to public inspection at the offices of the local authority during their normal hours of business. It is convenient to mention here that the local authority is, for this and all other purposes of the Act, by section 6 the council of the borough, urban district or rural district, in London the council of the metropolitan borough or common council of the City; the local authority has power to publish information regarding the provisions of the Act, and any local authority can appoint an officer to exercise its powers under the Act.

The register has by section 3 (2) to show, with regard to all contracts relating to premises within the area under which the rent has been approved, reduced or increased by the tribunal—

(a) the "prescribed particulars" with regard to the contract;
(b) a specification of the premises to which the contract relates; and
(c) the rent as approved, reduced or increased by the tribunal and, in a case in which the approval, reduction or increase is limited to rent payable in respect of a particular period, a specification of that period.

The " prescribed particulars " which are to be entered in the register by the local authority are set out in the Second Schedule to the regulations. The tribunal are by section 3 (3) required to furnish the local authority with such particulars of their decisions as will enable the local authority to discharge their functions regarding the register.

A copy of an entry in the register certified under the hand of an authorised officer of the local authority is by section 11 (1) receivable in evidence of that entry in all Courts and in any proceedings. Any person requiring such a certified copy may obtain it on payment of a fee which by regulation 12 has been fixed at 1s.

RENT IN EXCESS OF REGISTERED RENT ILLEGAL.

When a rent has been entered in the register under the 1946 Act in respect of any premises it is not lawful to require or receive as rent for those premises in respect of any subsequent period payment of any sum in excess of the registered rent (section 4 (1)). Of course if the rent which is registered is limited by the tribunal to a particular period, the prohibition extends only to that period. Furthermore, the Act prohibits the payment of any fine, premium or other like sum, or any consideration, in addition to the rent, as a condition of the grant, renewal or continuance of a contract to which the Act applies relating to premises the rent of which has been registered (section 4 (1)). Any payment or consideration which contravenes these provisions is by section 4 (2) recoverable by the person by whom it was made or given.

It is important to observe that a registered rent attaches to the premises. Even if at a future date the lessor puts in more or better furniture, he cannot charge a higher rent without the authorisation of the tribunal. He will have to refer the case back to the tribunal for reconsideration by them on the ground of a change in circumstances.

It is an offence to require or receive any payment or consideration in contravention of section 4 of the Act; the maximum penalty is a fine of £100 and six months' imprisonment. Without prejudice to any other method of recovery the Court which convicts for the offence may order the amount paid or the value of the consideration given to be repaid to the person who paid or gave it (section 9 (1)). It may be pointed out that only a local authority can institute proceedings for an offence under this Act (section 10).

RENT INCLUSIVE OF PAYMENT FOR SERVICES.

By section 2 (4) of the Act, where a contract is referred to a tribunal the rent whereunder includes payment for services and the tribunal are of opinion that it would be proper that the rent payable for the premises should include an amount in respect of increase since September 3, 1939, in the cost of providing such services, and are also of opinion that in all the circumstances a rent higher than the rent payable under the contract might properly be chargeable for the premises in order to include an amount in respect of such increase, they may approve a rent higher by not more than they think reasonable in that respect. This increase may be awarded by the tribunal on the first reference of a contract to them; and it might be arguable that this sub-section enables the tribunal to authorise this increase of rent during

the actual currency of a contract for a term of years, although the Solicitor-General has expressed a contrary opinion in the House of Commons.

A serious question arises, however, whether this provision applies to all contracts inclusive of " services " as defined in the 1946 Act, or only to such of those contracts as are not controlled under the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939. It is provided by section 7 of the 1946 Act that save as regards the non-application of sections 9 and 10 of the 1920 Act to houses or parts of houses the rent whereof is registered under the 1946 Act, " nothing in this Act shall affect any provisions of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939 ". Those Acts fix a maximum recoverable rent for houses and flats to which the Acts apply, and no increase is allowed under them for an increase in the cost of services provided by the landlord, though he may be obliged to go on providing those services as a term of the tenancy. Of course nothing in those Acts can prevent a later Act from varying them by adding another legitimate increase of rent, and that would clearly have been the effect of section 2 (4) of the 1946 Act had the concluding words of section 7 been omitted. Are the general words at the end of section 7 strong enough to nullify what would otherwise have been a new legitimate increase of rent for controlled premises provided by section 2 (4)? It is not proposed here to venture an opinion upon what seems almost to be designed as an opportunity for litigation to find out what the new Act means.

It may be pointed out, however, that there was considerable agitation that landlords who were under contract to provide services such as hot water, central heating, etc., should be permitted to make an increase of rent proportionate to the now greatly increased cost of providing such services, and this not unreasonable reform was advocated by the Ridley Committee. When the new Bill was before the Lords in Committee (February 19, 1946), the Viscount Buckmaster gave notice of two amendments, one to section 2 and the other to section 7, which would beyond doubt have enabled a landlord of furnished or unfurnished accommodation to increase the rent proportionately to the rise since September 1, 1939, in the cost of services provided by him. The Earl of Listowel, on behalf of the Government, said that the Government accepted in principle the amendment put down by the Viscount Buckmaster, and that the alteration in wording in the amendment he was moving had the object of securing that it was an increase in the cost of services since the beginning of the war which had to be taken into account by the tribunal. Both Viscount Buckmaster and Lord Llewellyn thanked the Earl of Listowel for the way he had met them on the matter. The amendment in the form of section 2 (4) was then agreed to and nothing more was heard of the suggested amendment to section 7. In the Commons, however, when the House of Lords Amendments came to be considered (March 11, 1946), the Solicitor-General made it quite clear that in his opinion even if the tribunal purported under section 2 (4) to authorise in respect of premises controlled under the Rent Restrictions Acts a higher rent than was permitted by those Acts, the excess over the permitted rent could not be recovered. He went on to say that in the case of non-controlled premises, when

the tribunal authorises an increase the landlord can wait until the tenancy expires and then, when he negotiates a fresh tenancy, either with the same tenant or with a new tenant, he can charge the increased rent approved by the tribunal. It must be borne in mind that this is only the opinion of the Solicitor-General upon the meaning of this confusing provision, and, although a weighty opinion, is not an authoritative decision upon its construction. The Solicitor-General takes the view not only that section 2 (4) only applies to lettings not controlled under the Rent Restrictions Acts (for example, furnished lettings or lettings of dwelling-houses of high rateable value above the limits set by the 1939 Act) but also that it does not authorise interference with any existing contract so as to increase the rent thereunder, though other provisions of the Act enable other contracts to be referred to a tribunal by exactly the same procedure and clearly do enable the tribunal to interfere with existing contracts to the extent of reducing the rent. This is all very confusing. The Solicitor-General further says that in respect of non-controlled premises the advantage to the landlord might be quite substantial. It seems to the writer that if the Solicitor-General's interpretation of section 2 (4) is correct, the advantage of the provision to the landlord even in the case of non-controlled premises is very small. If the result of a successful reference by the landlord to the tribunal is only to authorise an increase of rent when the next contract is entered into, what was to stop the landlord doing that without applying to the tribunal? The Act places no restrictions on an increase of rent until it has become a registered rent. If the rent under the existing contract is less than is justifiable in view of the increased cost of services, the lessee is not likely to apply to the tribunal, and if he did the proper course would in the absence of section 2 (4) be a dismissal of the reference, leaving the lessor free to increase the rent on the next letting. If the Solicitor-General's interpretation is correct the benefit given to the landlord seems to amount to nothing.

It was strongly contended by Mr. Willink in the House of Commons that there had been a complete misunderstanding in the Lords as to the effect of section 2 (4). That this was so seems beyond dispute. However, the reply of the Minister of Health was political and went to the general policy of the Act rather than to the point of construction now under consideration, and so need not be discussed here. The reader will perceive that section 2 (4) opens up a fair field for inquiry as to what its effect may be, and the matter can only be left now for elucidation by the Courts in due course.

Notice to Quit Served After Reference to Tribunal.

In order that a lessee should not be penalised for referring his contract to the tribunal, a limited measure of security of tenure is given by section 5. If either the lessee or the local authority has referred the contract to the tribunal, either originally or for reconsideration, and the lessor serves notice to quit on the lessee at any time before the decision of the tribunal is given or within three months thereafter, the notice will not take effect before the expiration of three months from the date of that decision. The tribunal may, however, substitute a shorter period than the three months, and if the reference

is withdrawn the period during which the notice is not to take effect will end on the expiration of seven days from the withdrawal of the reference.

Obviously it is important, for the purpose of this provision, to know the precise date when a contract is referred to the tribunal, and the object of regulation 4, already considered above, is to define with precision when this is deemed to have been effected.

Regulations.

The Minister is given a wide power to make regulations by section 8 of the Act, and has issued the Furnished Houses (Rent Control) Regulations, 1946, thereunder. Detailed provisions of these regulations have already been considered above.

Principal Change Effected by the Act.

Although, as pointed out above, the new Act has some blemishes and some obscurities, which no doubt are due in part to the conflicting cross-currents of law reform, social reform and political prejudice which have influenced it during its passage through the Houses of Parliament, the net result is a definite improvement in the law in one direction.

The Rent Restrictions Acts of 1920 to 1939 have throughout been extremely weak on the subject of furnished lettings. The main provisions of those Acts do not apply to furnished lettings at all, neither as regards security of tenure nor as regards stabilisation of rents by relating them to a fixed standard rent. It is true that section 9 of the Act of 1920 attempted to restrain the charging of an excessive rental by pegging the rent by reference to an artificial standard known as the "normal profit", 1920-Act houses being allowed to yield to the landlord 25 per cent. above the normal profit for 1914 and 1939-Act houses being allowed to yield no more than the normal profit for 1939. But when profit is the basis and not the rent charged, so many factors enter into the calculation of profit that it is a hazardous and expensive matter for a tenant to attempt to prove that he is being overcharged. If it is difficult for the tenant to prove that the landlord is making too much profit out of the letting, it is still more difficult for either the tenant or the local authority to prove that the rent that is being charged is "extortionate" so as to constitute an offence under section 10 of the Act of 1920. In fact prosecutions under this section have been extremely rare. Furthermore, it is expecting too much to suppose that the landlord will look kindly upon a tenant who institutes proceedings to get his rent reduced and perhaps even prosecutes the landlord in the magistrate's Court. No security of tenure at all being provided by the Rent Restrictions Acts, the tenant well knew that any challenge he made to the legitimacy of the rent charged would be followed by steps to replace him by a more amenable tenant. In view of the present critical shortage of housing accommodation this last consideration has become the dominant factor and sections 9 and 10 of the Act of 1920 have become utterly ineffective.

What then is the new Act likely to achieve? In the first place it does provide a simple and cheap machinery for getting a fair rent

fixed by a tribunal for the furnished dwelling-house. That rent, once registered, becomes a form of "furnished standard rent" attached to the premises which the landlord cannot exceed without going back to the tribunal to ask to be allowed to charge an increase. This is more precise and much easier to invoke than anything provided by the old Acts. At the same time the Act provides the three months' restriction on a notice to quit to prevent the hasty and vindictive ejection of a tenant who has dared to apply to the tribunal. Obviously the three months' period is something of a compromise, and experience alone will tell whether that is an adequate or too timid measure. If the new Act is widely applied and invoked, so that it becomes the usual thing for furnished rents to be registered, the three months' restriction will probably fulfil its object, particularly as under the new scheme the rent once registered becomes attached to the premises and governs future lettings. It is understood that the Scottish Act has proved useful without any restriction on notices to quit at all, but of course before any inference could be drawn from this it would be necessary to compare the housing situation in Scotland with that in England.

The setting up of rent tribunals for furnished accommodation is certainly an interesting new venture in English law, and if successful it may well have an influence on the future development of Rent Restrictions law generally.

NOTES OF RECENT CASES.

1. *PROPERTY AND CONVEYANCING CASES.*

Vendor and Purchaser—sufficient memorandum—implied term concerning completion and possession.—In *Johnson* v. *Humphrey*, [1946] 1 A. E. R. 460, the vendor signed a memorandum of an informal character which contained a reference to a deposit and "the balance to be paid immediately on possession". Shortly after this document was signed the purchaser's solicitors wrote to the vendor suggesting a draft contract and including a statement that the vendor was to give vacant possession on completion. To this letter the vendor replied that the agreement was that she should give possession when she could make arrangements to leave with her furniture. Subsequently she repudiated the contract because she could not find other suitable accommodation. In an action for specific performance by the purchaser, Roxburgh, J., held that (i) there was no sufficient memorandum because he was satisfied that even if the agreement had reached definable terms, which he doubted, it was a term which was not expressed in the memorandum, because the date for completion was not fixed and therefore the date for giving possession and the date for completion remained uncertain in the memorandum; and (ii) it was not possible to fix the date for completion as a reasonable time and so fix the date for giving possession, because, although apart from express provision the time of completion as a reasonable time and giving vacant possession are implied terms, so to hold in this case would be inconsistent with the express term. The learned Judge expressed the opinion that the suggestion that the express provision meant that possession was to be given within a reasonable

time was in the circumstances of the present difficulties of obtaining accommodation too difficult.

The case clearly turns on its own facts and does not really lay down any new principle. It is, however, useful as indicating the limits of the right to enforce an informal memorandum save in the simplest case.

Vendor and Purchaser—position of parties pending completion.—Obligations involved in giving vacant possession.—Cumberland Consolidated Holdings v. *Ireland,* [1946] 1 A. E. R. 284, is a useful decision by the Court of Appeal on the obligation of a vendor pending completion. It is frequently asserted that he is a constructive trustee, but most of the decisions tend to whittle down any liability arising from this trusteeship, though a vendor must take reasonable care of the premises and not let them fall wantonly into ruin: *Phillips* v. *Silvester* (1872), L. R. 8 Ch. App. 173, and reasonably protect them against the acts even of trespassers: *Clarke* v. *Ramuz,* [1891] 2 Q. B. 456. In this case, however, the point was more positive. The vendors had in the cellars of the premises some valueless rubbish which in negotiations they had promised to clear but had not done so. The purchasers, after completion, had cleared the rubbish at their expense and claimed the expenses as damages. The Court of Appeal held that the vendors were liable. Not clearing the premises of the rubbish was a breach of trust. As the rubbish materially prevented the user of part of the premises, so the vendors had not given vacant possession, since until the time that the rubbish was cleared there was no possibility of user. It is to be noted that in this connection the word possession does not mean legal possession; were it so the rubbish would not be contrary to the rights of the owner, but a "factual" possession which we may describe as occupation. The abandonment of ownership of the rubbish did not alter the liability of the owners. However, to prevent delivery of vacant possession in this sense there must be "an impediment which substantially prevents or interferes with the right of enjoyment of possession of a substantial part of the property": *per* Greene, M.R., at p. 287.

Covenants running with the freehold—obligations to supply water.—Shayler v. *Woolf,* [1946] 1 A. E. R. 464, though it does not lay down any new law, emphasises some principles of considerable importance in country properties. A vendor entered into a collateral agreement which provided, *inter alia,* for a supply of water from a pump on land retained by her, for the maintenance of the pump and other apparatus and for arbitration in case of dispute. The purchaser having sold the property and also purported to assign the benefit of the collateral agreement, the third party brought an action against the original vendor. The agreement was not entered into by and on behalf of successors in title expressly. Roxburgh, J., held that (i) the agreement was assignable and was deemed to be made in favour of successors in title by virtue of section 78 of the Law of Property Act, 1925; (ii) the *benefit* of the covenant was annexed to the land and ran with the land at Common Law. The second point, which the learned Judge decided first, really made it unnecessary for him to decide the first, as he himself pointed out, but he did so out of abundant caution in case he should be wrong on the first point.

It is generally assumed that the burden of a positive covenant, involving expense, does not run with the land at Common Law. This assumption is

made on the basis of the inconclusive statements in *Austerberry* v. *Oldham Corporation* (1885), 29 Ch. D. 750 (cited in the instant case) which, it is thought, have never been sufficiently examined, but again without discussion the assumption was made by the Court of Appeal in *Cator* v. *Newton*, [1940] 1 K. B. 415, though even here the case turned more upon the effect of the Land Registration Act than the general law. In the instant case the problem of the burden did not arise, because the original vendor was sued. The benefit was held to run of a covenant to keep the pump in order on the analogy of an earlier decision to the same effect concerning a covenant to erect a pump and pump water in *Cooke* v. *Chilcot* (1876), 3 Ch. D. 694, which case, however, extended to the vendor and in the light of the headnote to *Austerberry* v. *Oldham Corporation* (*supra*) has been assumed to be overruled. At the same time the learned Judge distinguished *Grant* v. *Edmondson*, [1931] 1 Ch. 1, which held that a covenant to pay a rentcharge did not run with a rentcharge on the ground that that decision related only to incorporeal hereditaments.

Another difficulty faced by the learned Judge was that it has been held repeatedly that arbitration agreements are not assignable and, therefore, it was argued that a term of the contract not being assignable the whole contract was not assignable. The decision distinguished arbitration agreements from arbitration clauses in an agreement.

The essential difficulty of these collateral agreements, or covenants inserted in conveyances, is that their effectiveness depends upon being able to keep touch with the original covenantor and ensuring that he shall require an indemnity from his purchaser. To take the instant case as an example. If the original vendor had already sold her land then no action would lie directly against her purchaser and if she had no financial stability and had taken no indemnity (as in *Cator* v. *Newton* (*supra*)) there would be no satisfactory remedy. The least the conveyancer can do is to add a covenant by the covenantor to take an indemnity from any purchaser from him! Actually the robust common sense of Malins, V.-C., in *Cooke* v. *Chilcot* (*supra*) and of the old Common Law might be recovered and allow both benefit and burden to run with the land where in fact the covenant touches and concerns the land.

Nuisance—defective electric wiring installed—owner, not occupier, liable to neighbour for fire.—In *Spicer* v. *Smee*, [1946] 1 A. E. R. 489, an owner was held liable for a fire caused by a defective wiring setting fire to the bungalow and subsequently spreading to neighbouring land. The evidence was that the defect occurred at installation and did not subsequently become defective. In these circumstances there was no question of showing any carelessness or neglect of duty on the part of the owner and it was no defence to plead independent contractor. The only remedy of the owner in such circumstances appears to be insurance.

Charity — air-raid distress — not for general public purpose. — *Re Hobourn Aero Components, Ltd.*, [1945] 2 A. E. R. 712 (noted *ante*, p. 165, *sub nom. Re Air-Raid Distress Fund*) has been affirmed by the Court of Appeal ([1946] 1 A. E. R. 501). A fund subscribed to by employees for purposes mainly concerned with relief of distress caused by air raids among members of the firm was held by Cohen, J., not to be a charitable trust. Leave to appeal to the House of Lords was granted to

the Attorney-General and, therefore, it is probable that more will be heard of this case in another Court. Hence this note will not deal fully with the decision of the Court of Appeal at this stage. Lord Greene, M.R., in delivering the principal judgment of the Court of Appeal, took occasion to review some of the authorities. In particular, he reviewed the facts elicited in examination which disposed of any intention to make the fund applicable to the relief of poverty. The learned Judge did not exclude from the ambit of possible charities a fund from which the benefits are confined to members or subscribers (p. 507). It seems that a trust that is essentially private and does not fall into the character of one of those for the relief of poverty or the advancement of education or religion must essentially be a public purpose and even in these latter cases the learned Master of the Rolls reaffirmed his opinion in *Re Compton,* [1945] Ch. 123 (noted *ante,* vol. 9, p. 152) and cast considerable doubt on the opinion of Bennett, J., in *Re Forster,* [1939] Ch. 22, where a fund for supporting infirm, sick and aged Roman Catholic priests in a certain diocese was held to be charitable as being for the advancement of religion. In the event of no appeal being decided or the case going off on another point it will be necessary to analyse this very important decision further.

Town Planning—prohibition of structure for use for advertisement—"structure".—Mills & Rockleys, Ltd. v. *Leicester City Council,* [1946] 1 A. E. R. 424, is a warning on the problems that face planners. The appellants, on a case stated from the magistrates, had prepared a wall for the purpose of advertisement display. The respondents served notice under the Town Planning Act, 1943, as interim development authority, prohibiting the use of the wall for advertisement display as a scheme was in preparation by which such prohibition was to be enforced. The magistrates upheld this view of the powers of the authority, but a Divisional Court quashed the order of the magistrates on a case stated. Goddard, C.J., pointed out that the 1943 Act must be construed with the 1932 Act, notwithstanding that this is not expressly provided, and under the 1932 Act, section 47 (8) there was no power to prohibit advertising generally but only power to order the removal of particular advertisements which interfered with the amenities. The case should be consulted as a whole on construction. The usual powers are very widely drawn, but in the 1932 Act advertising is dealt with particularly and the provisions, as the learned Lord Chief Justice pointed out, wear the look of compromise between the desires of planners and of advertisers. Consequently, this special provision was spelled out in connection with the 1943 Act as part of the planning legislation as a whole. The interconnection between these statutes may prove the subject of further litigation.

The Court also held that the word "structure" (contained in section 47 (8) which limits prohibitions where there is an "erection or use of structures" for advertising) included the wall of a house. This turns partly upon the definition of "building" in the Act and partly upon the general notion that something that is built is constructed and, therefore, any part of a building is a structure. What is more important to notice, perhaps, is that the limitation does not seem to apply merely where the structure has been put to the primary use of or was primarily erected for advertising.

(Reference should be made to the article (*ante,* p. 208) appearing earlier in this number.)

Settlement—life interest with gift over on sale of land—void if sale of land under statutory powers.—Re Hubert, [1946] 1 A. E. R. 421, raises again the question of limitations of the income of personal estate given to a tenant for life with limitation over if the tenant for life disposes of the settled land. A fund was created out of which the trustees will discharge outgoings on the estate and if need be to apply part of the capital for expenditure of a capital nature and subject thereto to pay any part of the income not so needed to the tenant for life for the time being. Vaisey, J., held that on a sale of the settled land the whole income became payable to the tenant for life because the limitation over was void by reason of the Settled Land Act, s. 106. In so holding, the learned Judge followed the decisions in *Re Ames,* [1893] 2 Ch. 479 and *Re Smith,* [1899] 1 Ch. 331, which he regarded as indistinguishable. In *Re Ames* (*supra*), North, J., held that a direction to keep up certain sea walls and other matters affecting the settled land and subject thereto to pay the surplus to the tenant for life did not come to an end by virtue of section 51 of the Settled Land Act, 1882, and *Re Smith* (*supra*) was an analogous provision contained in a separate instrument. Vaisey, J., intimated that had the matter been free of authority he would have felt some hesitation in finding that the direction to pay the income to the tenant for life could continue after the primary purpose, namely the maintenance of the settled property, had come to an end. The learned Judge referred to but did not discuss *Re Simpson,* [1913] 1 Ch. 277, where an additional allowance given to a tenant for life of leaseholds to pay outgoings was held to cease on a sale of the property.

As was pointed out by the learned Judge the wording of section 106 is not very satisfactory, because the relevant prohibition refers to a provision "attempting, or tending or intended" to prohibit or prevent alienation. In his view the provision in this case could hardly be said in this connection either to attempt or intend anything, but having regard to authority the provision must be construed as "tending" to prohibit alienation.

It is important to notice in this case that the vital point seems to lie in the payment of surplus income to the tenant for life. If the purpose is merely to enable the tenant for life to reside on premises which otherwise he could not maintain and there is a separate fund, as in these cases, it would appear to be a matter of drafting. If the income is to be applied to the maintenance of the property, even by defraying outgoings both of an income and capital nature, then it seems that this can be achieved by following the decision in *Re Simpson* (*supra*). The practical difficulty here is to provide for the payment of any surplus income otherwise than to the tenant for life. Usually, however, the outgoings will exceed any such provision and no doubt the question will not arise. A direction to employ income on repairs or reinstatement need not be framed within the accumulations rule: *Re Mason,* [1891] 3 Ch. 467.

(2 K. & E., p. 717.)

Accumulations—"raising portions"—period of accumulation if within the section.—Re Bourne's Settlement Trusts, [1945] 1 A. E. R. 412, raised two interesting points on accumulation. The testator created a trust fund in favour of seven named grandchildren, all under the age of eight years, which was subject to the following trusts: as each grandchild attained eighteen he was to receive £52 p.a. out of the income, which subject to these payments was to be accumulated. When the last grandchild attained twenty-three the trustees were then to pay the capital and accumulated income, which were treated as separate funds, to such one or more of the grandchildren as were then living in such shares as they thought fit,

and the children of a deceased grandchild could stand in his place. All the capital could go to one grandchild or great-grandchild and all the accumulated income to another. Prior to the date of distribution the trustees had power to pay a seventh of the capital and £500 out of the income fund to a beneficiary.

The Court of Appeal (affirming Evershed, J.) held that (i) the trust was not a trust " for raising portions " and so was within the accumulations rule and the direction to accumulate was void as to excess, and (ii) the period during which the accumulation was valid was the lifetime of the settlor and not during the minority only of any person who, if of full age, would be entitled to the income directed to be accumulated.

On the first point Lord Greene, M.R., pointed out that the discretion was too wide to be confined to " raising portions ". A beneficiary might get only income and no capital at all, but alternatively he might get all the capital and income. The first might be a portion but the second not. The essential point is that for the purpose of section 164 of the Law of Property Act, 1925 (concerning accumulations), it is necessary for the accumulations to be concerned only with raising portions and not merely be a power to employ the accumulations as such—or so it would seem.

The second point seems largely to have been discussed on the argument that section 31 of the Trustee Act, 1925, had made the difference because the trust carried the intermediate income and so the persons were " entitled to the income directed to be accumulated ". The point was that the age of twenty-three must in any case be reduced to twenty-one and that then the maintenance provisions of section 31 of the Trustee Act applied and so the period was ascertained. Lord Greene rejected this argument on the ground that each beneficiary had only a contingent interest and that this contingent interest did not carry the intermediate income within section 31, because, at distribution, the trustees could pay the capital to one beneficiary and the income to another. It is to be noted that the learned Master of the Rolls did not exclude the argument that section 31 might affect the position, but only that on these facts it did not. Hence, as no other period applied, the period had to be the life of the settlor.

(2 K. & E., p. 730, n. (*t*).)

Settlement—marriage settlement—effect of decree of nullity for impotence.—One of the most peculiar problems of English law is the effect of a decree of nullity based on impotence. The marriage is *normally* only voidable at the instance of one of the parties (*Davies* v. *Davies*, [1935] P. 58, and Vaisey, J., in *Re Ames' Settlement* (1946), 62 T. L. R. 300, must be taken to have been speaking generally when he said that only one of the parties could petition for nullity: see *G.* v. *G.* (1908), 25 T. L. R. 328). Furthermore, it must be set aside in the lifetime of one of the parties: *A.* v. *B.*, L. R. 1 P. & D. 559. Notwithstanding this the decree declares that the marriage was null and void *ab initio*. Nevertheless, divorce Judges have pointed out over and over again that the marriage is voidable and not void; and it has certainly been held to be effective for some purposes: *Dodworth* v. *Dale*, [1936] 2 K. B. 302 (where many of the authorities are discussed); and see *per* Goddard, L.J., in *Re Eaves*, [1940] Ch., at p. 121. The point arose in *Re Ames' Settlement* (*supra*), because a paternal settlor had provided a fund which in default of issue and on the death of the husband was to pass to next-of-kin. Vaisey, J., held that on a decree of nullity the fund was held on a resulting trust for the settlor, because the marriage had not been " solemnised " adequately (*Re Garnett* (1905), 74 L. J. Ch. 570) and that the consideration failed. The learned

Judge distinguished *Re Eaves* on the ground that in that case the widow on remarriage automatically lost her right and she could not claim to wait to see if the marriage could be avoided, consequently any other decision would have involved something being undone whereas in the instant case the decision only affected the future. It is submitted that neither void nor voidable are very appropriate words to use in this connection; the effect of the decree, rather than its form, which is anomalous, requires further investigation.

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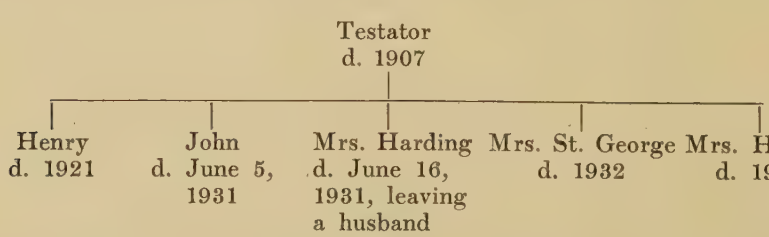
2. *WILL CASES.*

By J. H. C. MORRIS, B.C.L., M.A., of Gray's Inn, Barrister-at-Law.

Rule in Lassence v. *Tierney—whether applicable to clause of accruer.*—"If you find an absolute gift to a legatee in the first instance, and trusts are engrafted or imposed on that absolute interest which fail, either from lapse or invalidity or any other reason, then the absolute gift takes effect so far as the trusts have failed, to the exclusion of the residuary legatee or next-of-kin as the case may be": *per* Lord Davey in *Hancock* v. *Watson*, [1902] A. C. 14, 22. This is the classical statement of the celebrated rule, conveniently but inaccurately called the rule in *Lassence* v. *Tierney* (1849), 1 Mac. & G. 551, which is well known to all Chancery lawyers. The following is an example of how the rule works: the testator divides his residue equally between his children, and goes on to provide that his trustees shall not pay their shares to daughters, but shall hold them on trust for the daughter for life, and then upon trusts for the daughter's issue. If, then, the trusts for issue fail, for example because none live to attain a vested interest, the daughter's share is not undisposed of after her death, but belongs to her estate, because an absolute interest was given to her in the first instance.

In *Re Litt* (1946), 62 T. L. R. 303, a new point fell to be decided under the rule. If the testator first gives an absolute interest to a daughter, and then engrafts trusts on it which fail, and then says that on such failure her share shall accrue to other daughters then living, on the same trusts as their original shares, what happens when the last surviving daughter dies without issue? Plainly the rule in *Lassence* v. *Tierney* applies to her original share, but does it apply to her accrued share, at second remove so to speak, with the result that the accruing share of the original daughter does not return to that daughter's estate, but belongs to the estate of the last daughter? In view of the frequency with which *Lassence* v. *Tierney* clauses and clauses of accruer occur in wills, it is strange that the point seems never to have arisen before. A family tree will show more clearly than a long description how the point arose in *Re Litt*:—



The testator gave his residuary estate in trust in unequal shares for his five children. He then declared that the share of each child other than Henry should not vest absolutely in such child, but should be retained by the

trustees on the trusts which followed. He then settled their shares on the remaining four children for their lives with ultimate trusts for their children, or, if none, in the case of daughters for their surviving husbands. Pausing there, it is plain that the *Lassence* v. *Tierney* rule applied to the share of each child except Henry, since an absolute interest was given in the first instance, which was cut down by subsequent restrictions. The testator went on to declare that if any child of his should not have any child who attained a vested interest (and in the case of a daughter not leaving any husband her surviving), such child's share and any additional accruing shares should accrue to such of his children as should be living at the death of such child and to the children or child then living of any deceased child of his and if more than one in equal shares but so that the children of any then deceased child of his should take equally between them the share which their parent would have taken if living and so that the share which should accrue to any child of his other than Henry should be held on the trusts therein declared concerning his or her original share. It will be noticed that the accruer clause was very carefully drafted so as to avoid the usual pitfalls.

None of the testator's children had issue who lived to attain a vested interest. Only one of his daughters left a husband her surviving. The deaths occurred in the order shown above. No question arose on Henry's death, since his share was not settled. When John died his share accrued to his three sisters. No question arose on Mrs. Harding's death, since she left a husband her surviving. When Mrs. St. George died her original share and her share of John's accruing share accrued to Mrs. Hedley. What happened to these accruing shares when Mrs. Hedley died? Did they belong to her estate, or did they return to the estates of John and Mrs. St. George? The Vice-Chancellor of the County Palatine Court of Lancaster decided in favour of the latter alternative, but the Court of Appeal reversed him. They decided that the accruer clause itself created an absolute interest in favour of Mrs. Hedley, on which trusts had been engrafted which failed, and therefore the rule in *Lassence* v. *Tierney* applied to the accruing shares just as it did to the original shares. Two factors principally weighed with the Court of Appeal. One was the fact that the accruer clause contained a substitutional gift to children of deceased children of the testator, and the children were directed to take "the share" which their parent would have taken if living, thus implying that what was given to the parent in the first instance was a share of capital and not of income, an absolute interest and not a life interest. The second was the fact that in the wording of the accruer clause no distinction was drawn between shares which might accrue to Henry, and shares which might accrue to other children: both were spoken of as a "share". Shares which might accrue to Henry were unquestionably given to him absolutely, since his original share was not settled. Actually, of course, no share accrued to Henry, because he happened to die first; but that could not affect the construction of the clause.

(Theobald 397, 555; 2 K. & E., p. 900, n. (*t*).)

Inheritance (Family Provision) Act, 1938.—In exercising their jurisdiction under this Act, the Chancery Judges have made it clear that only in very exceptional circumstances will an application by a surviving husband succeed. *Re Lawes* (1946), 62 T. L. R. 231, was such an exceptional case. The testatrix (who left no children) left net estate worth £4,500. By her will she gave her husband (to whom she had been married for thirty years)

a legacy of £200 and the residue to the R.S.P.C.A. The husband was seventy years of age and could only earn a small income. Vaisey, J., somewhat reluctantly made an order for payment of £1 a week to the husband until his death or remarriage.

(Theobald 82; 2 K. & E., p. 886, n. (*y*).)

Changing words—gift to A "until" twenty-five.—By a singularly ineptly-drawn will, the testator in *Re Tottenham* (1946), 62 T. L. R. 245, gave his residue upon trust for his great-niece Joan "until" she should attain twenty-five, with a gift over to her sisters at twenty-one "in the event of Joan not attaining a vested interest". Provision was made for the education and maintenance of Joan until she attained eighteen, and "thereafter" the trustee had power to apply any part of the estate for her advancement in any business or profession. The testator died in 1936 and Joan attained twenty-five in 1944. The testator clearly must have intended Joan to take absolutely if she attained twenty-five, but he did not in terms say so. Happily, Wynn Parry, J., was able to carry out the testator's intention by reading "when" for "until". His decision appears to be clearly justified by the authorities.

(Theobald 619.)

Power of maintenance—intermediate income.—Section 31 of the Trustee Act, 1925, gives trustees a valuable power of maintaining infants out of income, which is in general more comprehensive than the corresponding power conferred by section 43 of the Conveyancing Act, 1881. The section applies only if and so far as a contrary intention is not expressed in the will: section 69 (2). It applies whether the interest of the infant is vested or contingent, but, in the latter case, only if the gift carries the intermediate income: section 31 (3). It is well settled that a contingent residuary bequest (and since 1925 a contingent residuary devise) carries the intermediate income during the period allowed for accumulation. In *Re Stapleton* (1946), 174 L. T. 188, a testator who died in 1943 gave his residue on trust out of the income to pay £200 a year to his wife during her widowhood and to accumulate the balance of the income. The direction to accumulate of course infringed the rule against accumulations and could only have been valid for a period of twenty-one years from the testator's death. From and after the death or remarriage of his wife the testator directed payment of the income to his two daughters equally during their lives with ultimate trusts for their issue. The daughters took out a summons asking whether the statutory power of maintenance was applicable out of surplus income while they were under twenty-one and unmarried. It was admitted that their life interests were contingent; the report does not explain why, so we must assume that they only arose on twenty-one or marriage. The difficulty was that it had been held by Clauson, J., in *Re Reade-Revell,* [1930] 1 Ch. 52, that if there is an express trust to accumulate the income during the infant's minority, the gift does not carry the intermediate income. That case was distinguished by Simonds, J., in *Re Leng,* [1938] Ch. 821, on the ground that the express trust for accumulation in the earlier case and the express trust for maintenance (which could not in the circumstances be utilised) indicated a contrary intention within section 69 (2) of the Trustee Act, 1925.

Unfortunately, Wynn Parry, J., in *Re Stapleton* felt unable to accept this explanation. He decided that the gift to the testator's two daughters

did not carry the intermediate income and therefore that the statutory power of maintenance did not apply. The position is anomalous and unsatisfactory, first because the distinction between an express trust for accumulation (as in *Re Reade-Revell* and *Re Stapleton*) and an implied trust for accumulation (as in *Re Leng*) is an extremely fine one; secondly, because section 31 (3) of the Trustee Act, 1925, which was apparently intended merely to restate the existing law, has had the effect of making the new power of maintenance inapplicable in circumstances where it would undoubtedly have been applicable before 1926.

(Theobald 147; 2 K. & E., p. 586, n. (*t*).)

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3. *LANDLORD AND TENANT CASES.*

By Lionel A. Blundell, LL.M., Barrister-at-Law.

Acceptance of reduced rent during war—subsequent claim for arrears—estoppel.—In *Buttery* v. *Pickard* (1945), 62 T. L. R. 241, a house was let for the business of a dancing school in 1936 for fourteen years at the yearly rent of £78 (which the tenant in fact paid in weekly instalments of 30s.), with an option to the tenant to break at the end of the first five years. In 1940, the war having affected the tenant's business, she informed the landlord that either he must accept less rent or she must give up her lease, and that the most she could offer was 15s. per week. The landlord agreed to this but stipulated that if it were not paid regularly it must revert to the 30s. reserved by the lease, and that the reduced payment was not to apply to what the landlord's solicitor erroneously called the "option period" beginning in October, 1941. The tenant agreed, and 15s. a week was paid and accepted for a long period after 1941. When conditions improved she increased her payments voluntarily to 17s. 6d. a week and then to £1 a week, and ultimately in October, 1944, to 30s. a week. The landlord then claimed as arrears the difference between 30s. a week from October, 1941, and the sums actually paid by the tenant during that period.

The tenant contended that the agreement made in 1940 (which was contained in correspondence) amounted to an agreement that the lease should terminate on October 8, 1941, and that thereafter there was a tenancy at 15s. a week. Reliance was placed on *Fenner* v. *Blake*, [1900] 1 Q. B. 426, where a tenant from year to year of a Lady Day holding made an oral agreement with his landlord in December to surrender at the following Midsummer and, the landlord having with the tenant's knowledge and assent sold the premises to a purchaser with the right to possession at Midsummer, it was held that although this agreement was bad as an agreement to surrender by reason of its not being in writing, it amounted to an acceptance of a new tenancy to end at Midsummer which worked a surrender of the old one by operation of law.

Humphreys, J., held that *Fenner* v. *Blake* was not *in pari materia* with *Buttery* v. *Pickard*, though it is not clear from the report of the case what particular differences between the two cases he had in mind. It may be observed, however, that in *Buttery* v. *Pickard* the tenant had a lease for fourteen years which could not be varied or surrendered by parol, whereas it was only a tenancy from year to year in *Fenner* v. *Blake*; and *Buttery* v. *Pickard* was an agreement for reducing the rent while the term granted by the lease was still running, whereas *Fenner* v. *Blake* was an agreement for bringing a tenancy to an end. Humphreys, J., accordingly held that he could not say that the agreement come to in 1940 had put an end to the lease.

The learned Judge did, however, hold that the agreement made in 1940 estopped the landlord from subsequently claiming arrears at the full rate. *Fenner* v. *Blake,* it may be noted, was also decided on the second ground of estoppel. In *Buttery* v. *Pickard* the landlord could not now, in face of the agreement made in 1940, be heard to say that for the period from October, 1941, to November, 1944, the tenant owed rent at the rate of 30s. per week, and that there was no agreement between the parties that she should pay less. It was therefore an ordinary case of estoppel and the landlord was not entitled to recover the arrears he claimed.

It is to be noted that in this case there was consideration moving from the tenant in return for the reduction in rent, namely, her forbearing to exercise her right to terminate the lease at the end of the first five years. Viewed from the point of view of contract there was consideration moving from the tenant, and from the point of view of estoppel the tenant had altered her position for the worse in reliance on the landlord's agreement to reduce the rent. Agreement to pay a part of what one owes already is of course no consideration in law—see the Notes to *Cumber* v. *Wane* in Vol. 1 of *Smith's Leading Cases,* p. 373—and in itself could not be said to constitute the altering of a party's position for the worse.

Comparison should be made with *Bury* v. *Thompson,* [1895] 1 Q. B. 696, where a letter written by a tenant who had a lease for twenty-one years determinable at the end of the seventh year, saying that he would not be able to stop unless a reduction of rent were made, followed by inconclusive negotiations for a reduction of rent, was held to be a good notice to determine the term.

(Woodfall, 24th ed., pp. 274, 901 and 968.)

Validation of War-Time Leases Act, 1944—*" term to expire next after three months from cessation of present emergency "—construction.*—In *Viola* v. *Emerini* (1946), 62 T. L. R. 228, a lease at an annual rent was expressed to be " for a term to expire next after three months from the cessation of the present emergency ". The lease was dated October 24, 1941. The landlord gave the tenant a notice on October 9, 1945, requiring him to quit on November 9, 1945, and sued for possession.

Morris, J., after deciding that the emergency referred to was, having regard to section 2 (1) of the Validation of War-Time Leases Act, 1944, the duration of the war in Europe, so that the " cessation of the present emergency " was May 9, 1945, for the purposes of this lease, by virtue of the Tenancy Agreements (End of the War in Europe) Order, 1945, then went on to consider the meaning of the words " for a term to expire next after three months from . . . " It was argued for the tenant that the agreement was in effect one from year to year, so that the term to expire next after August 9 (three months from May 9) must mean the term to expire on October 23, 1945. If this were so, then the landlord would of course have given his notice prematurely.

The learned Judge held that to construe the words in such a way would be putting an unnatural strain on them, and that the reasonable and proper construction was that the words " next after " meant immediately after, so that the term expired on August 9, 1945, or possibly August 10, 1945. That date, three months " next after " the end of the emergency caused by the war in Europe, was therefore the " end of the war " for the purposes of this lease, and the month's notice provided for by the Validation of War-Time Leases Act could be given any time after that date. The notice given on October 9, 1945, was therefore effective.

It may be observed that there seems little foundation indeed for the

contention, apparently based upon the payment of an annual rent, that the tenancy ran from year to year. This would no doubt have been the case had the Validation of War-Time Leases Act, 1944, never been passed, but as section 1 of that Act expressly converts such a tenancy as this into a term of ten years determinable by one month's notice after whatever date is the "end of the war" for the purpose of the particular lease, there was clearly only one term of the lease, and that was a term expiring in 1951. There was certainly no term of the lease expiring on October 23, 1945.

Breach of covenant to repair—licence refused for the work under Defence Regulations.—In *Eyre* v. *Johnson,* [1946] W. N. 94, a tenant who had covenanted to keep in repair and to yield up the premises in repair at the end of the term applied for the requisite licence to execute the repairs under regulation 56A of the Defence (General) Regulations, but the licence was refused. He then delivered up the premises out of repair, and when sued for damages pleaded that performance of the covenant had become illegal.

Denning, J., held that the fact that it had become difficult or even impossible for the tenant to perform his covenant did not relieve him from the obligation of paying damages for its breach, and accordingly the landlord was entitled to recover. Moreover, the tenant was in fact seeking to rely on a condition of things brought about by his own breaches of covenant, for if he had performed his covenant during previous years when there was at first no limit at all on the execution of repairs and later the limit of expenditure was as high as £500, the present dilapidations would never have accumulated.

Baily v. *De Crespigny* (1869), L. R. 4 Q. B. 180, and *Matthey* v. *Curling,* [1922] A. C. 180, were referred to on the subject of intervening circumstances preventing the tenant performing his covenant. The case which of course invites comparison is the more recent one of *Maud* v. *Sandars* (1943), 60 T. L. R. 81, where a similar defence was set up by a tenant. There Lewis, J., was clearly of the same opinion as Denning, J., in *Eyre* v. *Johnson,* but in *Maud* v. *Sandars* the tenant had not even troubled to apply for the necessary licence, and Lewis, J., deciding the case on that ground, did not actually have to decide what would have been the position had a licence been applied for and refused.

(Woodfall, 24th edition, p. 727; Supplement No. 4, p. 34.)

County Court jurisdiction—house let furnished for more than £100 a year though its rent unfurnished would be less than £100 a year.—Section 48 (1) of the County Courts Act, 1934, gives a county court jurisdiction to hear and determine any action for the recovery of land where neither the value of the land in question nor the rent payable in respect thereof exceeds the sum of £100 by the year.

In *Somershield* v. *Robin* (1946), 62 T. L. R. 196, where a house was let furnished at a rent of £273 a year, the County Court Judge had apportioned the rent into three sums respectively attributable to furniture, to rates, and to the house itself, thus arriving at a figure less than £100 as the yearly rent in respect of the house itself. On this footing he assumed jurisdiction and tried the case.

The Court of Appeal held that he had no jurisdiction to try the case.

The sum agreed as rent, though inclusive of furniture and rates, was the rent at which the dwelling-house was let and the County Court Judge had no power to dissect it into constituent parts.

(Woodfall, 24th edition, p. 1108.)

Validation of War-Time Leases Act, 1944—*tenancy for period of national emergency until terminated by signing of peace "or such other declaration by the Government that the national emergency no longer exists"—notice to quit addressed to directors of company tenant.*—Two points arose in *Hawtry* v. *Beaufront* (1946), 62 T. L. R. 205, one a question of construction in relation to the Validation of War-Time Leases Act, 1944, the other a question as to the validity of a notice to quit.

A tenancy agreement made September 3, 1939, was "for the period of any national emergency or any European war or threatened European war to be computed from the date of the actual entry in the premises by the tenants until such national emergency or war shall have been terminated by the signing of terms of peace or such other declaration by the Government that the national emergency no longer exists".

Croom-Johnson, J., held that this agreement was for the duration of the war and fell within the Validation of War-Time Leases Act, 1944. He considered further that the words "until such national emergency" down to "no longer exists" were part of the language used to express the intention of the parties that the agreement was to be for the duration of the war, and that it was the European war that the parties had in mind. The effect of these findings was to substitute for the conditions for the determination of the tenancy expressed in the clause beginning "until" the mode of determination stipulated in the statute, namely, a one month's notice after May 9, 1945, the date fixed by the Tenancy Agreements (End of the War in Europe) Order, 1945, as the end of the war in Europe. In case, however, another Court should form a different opinion, the learned Judge went on to consider the meaning of the words "or such other declaration by the Government that the national emergency no longer exists" (there being as yet no peace treaty signed), and held that the announcement of Germany's unconditional surrender made by Mr. Winston Churchill as Prime Minister on May 8, 1945, was such a declaration by the Government.

Now the tenant was a limited liability company, but the month's notice which the landlord served on June 15, 1945, to terminate the tenancy was addressed to the directors of the company. This was challenged as being a bad notice. It is well established that a notice to quit should be addressed to the person who is tenant, though if served upon the tenant personally it need not be addressed to him by name: *Doe* d. *Matthewson* v. *Wrightman* (1801), 4 Esp. 5. It has also been held that where a corporation aggregate is the tenant the notice to quit should be addressed to the corporation and not to its officers: *Doe* d. *Carlisle* (*Earl*) v. *Woodman* (1807), 8 East 228, a case which, whether or not cited to Croom-Johnson, J., is not mentioned in the judgment. Croom-Johnson, J.'s judgment, however, holding the notice to be a good one although addressed to the directors, does not actually run counter to *Doe* d. *Carlisle* (*Earl*) v. *Woodman*. This notice, although addressed to the directors, said "we hereby give *you* one month's notice to quit . . . the furnished dwelling-house, etc., which *you* occupy and enjoy under the terms of an agreement dated September 3, 1939". Bearing in mind that even if the notice had been correctly addressed to the company it would still have had to be delivered to or (if sent by post) dealt with by an agent, and applying the principle of *Hankey*

v. *Clavering,* [1942] 2 K. B. 326, that in case of ambiguity the Court will favour that reading of the document which will give it validity, Croom-Johnson, J., held that this was a notice to terminate the tenancy *of the company* under the agreement of September 3, 1939.

The decision really turns therefore upon the construction of the word "you" in a particular document, and is not to be taken as a general authority that in the case of a company tenant a notice to quit may be addressed to the directors. This one was addressed to the directors, but Croom-Johnson, J., has read it as telling *the company,* and not merely its directors, to go. Seemingly, therefore, the principle that may be extracted from the case is that in the case of a company tenant, which has to act through its agents, a notice to quit may be addressed to its directors as such agents provided that in the body of the notice it directs *the company* to quit.

(Woodfall, 24th ed., p. 966.)

Rent Restrictions Acts—"suitable alternative accommodation" must be in a single separate dwelling-house.—In *Sheehan* v. *Cutler* (1946), 62 T. L. R. 261, the County Court Judge had treated as suitable alternative accommodation a protected tenancy of another house plus a tenancy of a single room in a different house—a solution which the Court of Appeal recognised as being very possibly an admirable and reasonable cause to adopt in the circumstances of the case.

The Court of Appeal were, however, unanimously of opinion that this could not be done in law. "The Act", said Scott, L.J., "requires the suitable alternative accommodation to be found in a single separate dwelling-house capable of satisfying the various requirements of sub-section (3) of section 3."

(Rent Restrictions Guide, p. 49.)

Rent Restrictions Acts—consideration of future hardship.—Where, on a claim for possession of a controlled dwelling-house under paragraph (h) of the First Schedule to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, the issue is whether, having regard to all the circumstances, greater hardship would be caused by making an order for possession than by refusing it, the Court is entitled to take into account hardship which would be caused to either party in the future as well as that existing at the date of the hearing. This has been decided by the Court of Appeal in *Bumstead* v. *Wood* (1946), 62 T. L. R. 272, Tucker, L.J., saying that the County Court Judge "had evidence before him of hardship to the plaintiffs in the future, and he was entitled to take it into consideration in forming his estimate of the degree of hardship to each party".

(Rent Restrictions Guide, p. 56.)

Rent Restrictions Acts—a letting for business purposes does not determine the standard rent.—A principle which has lately been developed, though it by no means follows incontrovertibly from the wording of section 12 (1) (a) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, is that only those lettings which are of a kind which are subject to control under the Rent Restrictions Acts are effective to determine a standard rent. Thus in *Signy* v. *Abbey National Building*

Society, [1944] K. B. 449, it was held that a first letting of the dwelling-house furnished does not determine the standard rent.

Now, in *Macmillan & Co.* v. *Rees* (1946), 62 T. L. R. 331, the Court of Appeal has applied—and indeed seems to have treated as self-evident—the principle that a letting of what is now a dwelling-house for purposes of business in the years 1938–9 is to be ignored when determining the standard rent. It seems to the writer that the development of this doctrine out of the words of section 12 (1) (a) merits a rather fuller explanation than judicial interpretation has so far provided. The doctrine which the Courts will apply is, however, clearly defined in *Macmillan & Co.* v. *Rees,* even though its genesis may not be so clear: business lettings, even of property identical with what is now let as a dwelling, do not fix a standard rent.

In that case the point which gave rise to contention was that the lease for business purposes, while prohibiting user otherwise than as an office for a specified business, expressly authorised the tenant and another named person to sleep on the premises should they so require. This privilege was exercised for a time, and they also had some meals there, but there was no evidence beyond that of the use of the premises as a home or residence. The Court of Appeal, after considering *Haskins* v. *Lewis,* [1931] 2 K. B. 1, held that it could not be inferred that user of the premises as a dwelling-house in any true sense of the term was contemplated. This was, of course, a decision on the construction of the particular instrument, and having regard to the small size of the demised premises. The Court of Appeal accordingly held that this lease did not determine the standard rent.

(Rent Restrictions Guide, p. 31.)

Rent Restrictions Acts—lettings with attendance or use of furniture—attendance to which tenant not contractually entitled—substantial portion of the rent.—Several points of interest in relation to lettings with attendance or the use of furniture arose in the case of *Property Holding Co.* v. *Mischeff* (1946), 62 T. L. R. 246, a decision of Henn Collins, J., which has attracted considerable publicity. These points were as follows:—

(1) The provision of central heating and hot water are not "attendance" for the purposes of the Rent Restrictions Acts, and accordingly a letting with such services provided is not thereby taken out of the Acts even if a substantial portion of the rent is attributable to those services. In this, Henn Collins, J., was bound by earlier authority, and he cited the case of *Wood* v. *Carwardine,* [1923] 2 K. B. 185.

(2) As regards attendance which is of a kind which is contemplated by the Rent Restrictions Acts, such as the attendance of a resident porter to do certain things for the tenants, no part of the rent can be said to be in respect of such attendance unless it is attendance which the landlord is bound to supply under the terms of his contract with the tenant. Henn Collins, J., did not quote any authority for this in his judgment, but authority for this proposition is amply provided by the case of *Michael* v. *Phillips,* [1924] 1 K. B. 143, which, no doubt, the learned Judge had in mind.

(3) Where, as in this case, the landlord has provided furniture in parts of the building common to all the tenants, but has not entered into any contractual obligation with the tenants that such furniture shall be there, that furniture is merely an amenity put there to attract tenants; it is in no sense let to any of the tenants and no part of the rent paid by the individual tenant can be attributed to that furniture.

(4) Linoleum, rubber floorcloth in the bathroom and lobby, a kitchen cabinet, a refrigerator, a fitted bathroom cabinet and mirrors, are all

comprehended within the word "furniture" in its ordinary meaning, even though they are all in some degree fixed to the freehold. This affixation of them to the freehold does not prevent them being furniture in the popular usage of the word. In this Henn Collins, J., was simply following the decision of the Court of Appeal in *Gray* v. *Fidler,* [1943] K. B. 694, which he cited. Having decided that these articles were furniture, he considered their present-day value, which he found to be about £200, and allowed 15 per cent. on that sum—namely £30 a year—as fairly attributable to the use of them. The total rent was £275 per annum, of which £73 was attributable to rates, and the learned Judge found as a fact that £30 was a substantial portion of £202 the net rent after allowing for rates.

Although great publicity has been focused upon Henn Collins, J.'s, decision that this flat was let with the use of furniture, and that the amount of rent which was fairly attributable to the use of furniture formed a substantial portion of the whole rent within the meaning of section 10 (1) of the Act of 1920, so that the flat was thereby taken outside the protection given by the Rent Restrictions Acts, the learned Judge has in fact merely given effect to earlier decisions of the Court of Appeal, notably *Gray* v. *Fidler,* which he was bound to follow.

At the end of the case it was contended that the successful plaintiff should be deprived of his costs under the provision in section 17 (2) of the Act of 1920 which deprives a successful plaintiff of the costs of an action brought in the High Court if he could have brought the action in the county court under the wide jurisdiction given to the county court by that section "to deal with any claim or other proceedings arising out of this Act or any of the provisions thereof, notwithstanding that by reason of the amount of the claim or otherwise the case would not but for this provision be within the jurisdiction of the county court". In this case the flat was of such a rateable value that, had it not been let with furniture, it would have fallen within the Rent Restrictions Acts, and so within the county court jurisdiction. Apart from those Acts, it would not have fallen within the county court jurisdiction at all, by reason of the rent at which the flat was let. The Court of Appeal held that the case must take its ordinary course as to costs, for as the landlord had succeeded in his contention that the flat was let with the use of furniture and was outside the Acts, this showed that the action was outside the county court jurisdiction and rightly brought in the High Court.

(Rent Restrictions Guide, pp. 68, 81.)

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4. *INCOME TAX CASES.*

By Leonard Stein, Barrister-at-Law.

Income tax—charity—"purposes beneficial to the community"—Income Tax Act, 1918, *s.* 37.—The rather confused state of the law with reference to charities is once again exemplified by the income tax decision of the Court of Appeal in *National Anti-Vivisection Society* v. *C. I. R.,* [1945] Tax. Rep. 385; [1946] W. N. 13, which arose out of an application by the society for exemption from tax under section 37 of the Income Tax Act, 1918. The relief of poverty, the advancement of religion and the advancement of education are tolerably well defined conceptions, and where the question is whether the moneys in question are applicable for one or other of these purposes, it can usually be decided without much difficulty. Much more baffling questions arise where the contention is that the case comes under the fourth head of Lord Macnaghten's celebrated classification in *C. I. R.* v. *Pemsel,* [1891] A. C. 531—"other purposes beneficial to the community not falling

under any of the preceding heads ". It has been frequently observed that the limits of this category are but vaguely discernible from the decided cases, which provide little guidance as to the principles to be applied. In the appeal under notice the society relied upon a decision in favour of an organisation with substantially the same purposes in *Re Foveaux,* [1895] 2 Ch. 501. In that case Mr. Justice Chitty said that " the intention is to benefit the community; whether, if they achieved their object, the community would, in fact, be benefited is a question on which I think the Court is not required to express an opinion ". From this last observation both Tucker, L.J., and MacKinnon, L.J., found themselves compelled to dissent, holding, in the light of later decisions, such as that in *Re Grove-Grady,* [1929] 1 Ch. 557, that it must now be considered to be the function of the Court to decide whether the purpose is, in fact, beneficial to the community, and to determine that question on the evidence before it. In the case of the Anti-Vivisection Society, the evidence heard by the Special Commissioners was overwhelmingly to the effect that the achievement of the society's objects would be to the disadvantage of the community. On the footing that the question to be decided was one of fact, the Court of Appeal, by a majority, affirmed the judgment of Macnaghten, J., dismissing an appeal by the society against an adverse decision by the Special Commissioners, though strong disagreement was expressed in a dissenting judgment by the Master of the Rolls. Leave was given to appeal to the House of Lords and, accordingly, some further light may be thrown upon the tests to be applied in deciding whether a given case does or does not fall within Lord Macnaghten's fourth category. It may be noted, as a matter of interest, that, although the purposes of the appellant society could only be achieved by legislative means, its main object being found, in the Case Stated, to be " the total abolition of vivisection ", this aspect of the matter was not mentioned in the judgments of the majority of the Court. It was not suggested that the society was disqualified from claiming exemption as a charity by reason only of the fact that it was engaged in a campaign for the enactment of certain legislation.

Surtax—companies' surtax—investment company—whether individual able to secure application of income or assets for his benefit—Finance Act, 1922, *s.* 21—*Finance Act,* 1939, *s.* 15.—The chequered career of the appeal in *C. I. R.* v. *L. B. (Holdings), Ltd.,* has at length been brought to a halt by a decision of the House of Lords in favour of the Crown—brought to a halt rather than to a close, for the case was remitted to the Board of Referees " for further procedure " in the light of the guidance now available. The question at issue related to the construction of certain words in section 15 (2) of the Finance Act, 1939, which forms part of the companies' surtax legislation and provides (*inter alia*) that, in apportioning the income of an investment company, the Special Commissioners may apportion such part of the income as appears to them to be appropriate to (among other classes of persons specified in the sub-section)—

> " any person who is a member of the company and in their opinion is or is likely to be able to secure that income or assets, whether present or future, of the company will be applied either directly or indirectly for his benefit to a greater extent than is represented in the value for apportionment purposes of his relevant interests in the company, considered in relation to the value for those purposes of the relevant interests of other persons therein ".

Sub-section (3) then goes on to provide that

> " a person shall be deemed to be able to secure that income or assets

will be applied for his benefit if he is in fact able so to do by any means whatsoever, whether he has any rights in law or equity in that behalf or not . . ."

In the *L. B. (Holdings) Case* (above) the Special Commissioners held that a certain apportionment which had been made under these provisions could not stand, since the prescribed conditions were not satisfied. The Board of Referees agreed with them. Wrottesley, J., allowed the Crown's appeal, but a different view was taken by the Court of Appeal, whose decision has now been reversed by the House of Lords. Were the words " by any means whatsoever " to be construed as meaning " by any lawful means "? Could an individual be within the category in question if he could only secure the benefit by means of a breach of trust? Does the word " secure ", in this context, connote permanency or certainty, or will the words of the sub-section be satisfied by a temporary application for the benefit of the individual, as, for example, by way of a loan? If the application for his benefit would be open to objection on the part of other persons whose rights would be infringed, can he be said to be " able to secure . . ." only in a case in which he can count with confidence on acquiescence or condonation? These and similar questions engaged the attention of the Courts below, but the House of Lords took the view that the problem could not be solved in terms of abstract definitions or of glosses upon particular words. What emerges from the speeches of Lord Thankerton and Lord Uthwatt is, in effect, that the question is essentially one of fact, to be decided, in the light of common sense, by reference to the circumstances of each individual case. As Lord Uthwatt put it, the question to be answered with regard to the individual concerned is simply: " Can he rationally be said to be able to secure an application of income or assets for his benefit? " No means by which he could do so are to be excluded from consideration, but where the means would be unlawful, the tribunal of fact must also weigh the chances of effective intervention. " Heads ", said Lord Uthwatt, " may go in the air in imagining the possibilities open to the praepositus, but the feet must be kept on the ground in estimating the probable consequences." As to whether " secure " connotes permanency, Lord Thankerton laid it down that an application might be for the benefit of the individual notwithstanding that it was temporary, and said that even a loan to be eventually repaid was not to be excluded. It comes to this—that, giving the words of the sub-section their ordinary meaning, the tribunal of fact must decide, according to a rational estimate of all the relevant facts, whether those words are satisfied in the case before it.

Surtax—annual payments—power of revocation—whether exercisable within six years' period—Finance Act, 1938, *s.* 38 (1).—In *Taylor* v. *C. I. R.,* [1946] Taxation Reports 45, the taxpayer had in September, 1936, entered into a deed of covenant providing for the payment, for the benefit of his son, of a monthly sum of £33 6s. 8d. clear of all deductions, including income tax. The deed contained a power of revocation, but in September, 1938, the covenantor, mindful of the provisions of section 38 (1) (a) of the Finance Act, 1938, and of the Third Schedule to that Act, had revoked the deed of 1936 and substituted a new deed, whereby the power of revocation was not exercisable within the period of six years from the date of the first payment under the deed of 1936. By a further deed executed in March, 1939, he had reduced the monthly sum to £22 13s. 4d. Having realised that the provision for payment without deduction of tax was void under Rule 23 of the All Schedules Rules of the Income Tax Act, 1918, he had, in December, 1939, executed yet another

deed, whereby the monthly sum was fixed at such an amount as would after deduction of income tax leave £22 13s. 4d. Finally, by a deed executed on April 1, 1940, he extended the period during which the power of revocation could not be exercised from September 11, 1942, to April 7, 1946. This had been done with a view to enabling the covenantor to benefit by the proviso to section 38 (1) of the 1938 Act. Section 38 (1) (a) provides, in effect, that, where there is a power of revocation, annual payments under covenant shall be treated as income of the covenantor. But this is subject to the qualification contained in the proviso:

> "Provided that where any such power as is referred to in paragraph (a) of this sub-section cannot be exercised within the period of six years from the time when the first of the annual payments so referred to becomes payable, and the like annual payments are payable in each year throughout that period, the said paragraph (a) shall not apply so long as the said power cannot be exercised."

The question at issue in the appeal related to the monthly payments for the year of assessment 1941–42. For that year the gross annual amount payable, with tax at 10s. in the pound, was £544, whereas the annual amount payable under the deed of September, 1938, after giving effect to the reduction of the monthly sum by the deed of March, 1939, was £272. Was the difference between the two amounts, being the additional payment provided for by the deed of December, 1939, caught by sub-section (1) of section 38 of the 1938 Act, or was it within the saving words of the proviso? On this point the Court of Appeal, affirming the judgment of Macnaghten, J., decided in favour of the Crown. It was held that the question to be decided was: Were the payments made in 1941–42 made under a settlement by which the provision for payment was irrevocable for six years from the date when the first payment under that settlement became due? What, then, was the settlement under which the 1941–42 payments were made? The answer was that it was the composite "settlement" consisting of the deed of December, 1939, plus the deed of April, 1940. The first payment under *that* settlement became due on April 30, 1940. The question was, therefore, whether the power of revocation was incapable of being exercised before the expiration of six years from that date. To that question the answer was in the negative, since the restriction on the power of revocation came to an end on April 7, 1946, and, accordingly, the proviso to section 38 (1) was inapplicable.

CORRECTION

FOR "THE CONVEYANCER", VOL. 10, PART 1.

Page 17. *Substitute* the following for paragraph commencing line 23:—

We give a few instances: a limitation "to A and B and the heirs of B" seems without doubt, as there are *no* words of severance, to make in effect A and B joint tenants for life and subject thereto to give B the fee: if A survives B, A takes the whole for his life, since joint tenants are seised per tout as well as per mye, with remainder in fee to B's estate (*c*): if A predeceases B, B is then seised of the entirety in fee as in possession, his former tenancy per mye for life in a moiety being extinguished in his seisin of the fee in the whole.

THE LIBRARY.

The Conveyancer's Year Book, 1945. Vol. 6. Edited by Sir Lancelot H. Elphinstone and R. E. Megarry, both of Lincoln's Inn, Barristers-at-Law. London: Solicitors' Law Stationery Society. pp. lii and 343. (25s.)

The latest issue of the *Conveyancer's Year Book,* which came to hand rather late for review, not only has an additional editor but also certain additional matter, and we think, without any disrespect to Sir Lancelot and previous issues, that the Year Book is to be congratulated on both additions. The additional matter is very largely references to cases not reported in the ordinary reports, but contained in such publications as the *Estates Gazette* and *Law Journal County Court* series. As the learned Editors say, this matter may help practitioners to get the "feel" of the practical matters dealt with. The only objection is the doubt sometimes experienced whether in all cases the reports are sufficiently representative. Some of the cases noted have brief editorial comment. Another useful feature is references to articles of interest to conveyancers contained in various periodicals. Selection must present some difficulty, but we can see no ground for complaint though we might not agree, while we would suggest that editorial comment is not always very enlightening. For example, under Co-ownership attention is called to the two articles on concurrent interests in that part of Vol. 9 of *The Conveyancer* which falls within 1944 (the year under review). The comment is an extract from the article on undivided shares which gives one of three suggested constructions of the effect of a voluntary conveyance to A and B on trust for C and D and a further, not wholly accurate, statement concerning the effect of the same grant for value. Without giving an explanation of the reasons for the suggested construction the learned Editors give a different construction without explaining why under their construction an undivided share in land can be created contrary to the provisions of the Act. The matter is undoubtedly obscure, which is why it is shortly dealt with in two pages in *The Conveyancer,* but it seems scarcely adequate therefore to deal with it in two paragraphs, which omit the other possible constructions altogether or rather imply that the article did. In point of fact the construction thought by the learned Editors to be the right one is that first dealt with in the article. We have only selected this point to indicate our opinion that users of the Year Book should go straight to the article; space prohibits, at least in many cases, any adequate account of the contents of the article. We suggest with deference that perhaps a little more scope could be given to indicating the contents.

We have said enough to show that with the additional notes on Statutes and S. R. & O.s this is a very useful and handy compilation. No two editors would produce the same book and nothing we have said must be taken to detract from its merits. Practitioners must remember that it relates to 1944, though called the Year Book, 1945, and that it omits all reference to the Education Act, 1944, so far as we have discovered.

The Principles of Town Planning Law. By J. Charlesworth, LL.D., of Lincoln's Inn, Barrister-at-Law, Recorder of Pontefract. 1946. London: Stevens & Sons, Ltd., 119 & 120 Chancery Lane. pp. xii and 164. (10s. 6d.)

It is clear that the importance of Town Planning will increase and that much of conveyancing work will fall to be carried through within its framework. It is, of course, purely statute law and, perhaps from its nature, complex statute law. So far there is little case law and the modern tendency of conferring unimpeachable discretions upon the Minister will be likely to keep case law down. All of this, no doubt, makes the lawyer reluctant to grapple with the Acts and their schedules. Here in this book we have Town Planning Law made easy. We found

it not only very clear, which we expect from Dr. Charlesworth's reputation as a writer, but interesting. We actually sat down and read the book through in an evening, a compliment which this reviewer has rarely been able to pay to a law book. From its size it cannot be exhaustive, but for all who need a real introduction to an important topic which should be grasped as a whole we recommend this book most warmly.

Cambridge Law Journal, Vol. IX, No. 2. 1946. London: Stevens & Sons, 119 & 120 Chancery Lane. pp. 132. (5s.)

The *Cambridge Law Journal* is, of course, well known to Cambridge men of many generations and deserves to be well known to all those interested in the more erudite problems of law, new and old. It remains too at a remarkably low price for the amount of matter contained. As usual in this number there is something to everybody's taste, including a moot on murder, the nature of usufructus, liability for crime, warranties of land in the reign of Richard I, and "A Lawyer's Alice". Such a catholic taste must meet the needs of Everyman. To the conveyancer the most technically interesting is Mr. Bailey's reply to Mr. Megarry's article on "to A and his issue". Mr. Bailey remains unrepentant and the profession confused upon the effect of section 130 of the Law of Property Act, 1925, on a gift to A and his issue. Mr. J. H. C. Morris has joined in the fray in a footnote so that Mr. Bailey is supported by weight of numbers. The only moral seems the expenditure of some testator's estate in determining this learned issue—but in the meantime we have at least learnt that it is controversial.

As an existing subscriber to the *Cambridge Law Journal* this reviewer heartily commends its support to subscribers to *The Conveyancer.*

The Mystery of Peter the Painter. By J. P. EDDY, K.C., Recorder of West Ham. London: Stevens & Sons, Ltd. 1946. pp. 32. (3s.)

Those conveyancers, who relieve the tedium of their labours by reading "thrillers", may care to have this account of a real life crime story that would vie with even an "Edgar Wallace". It differs from fiction because it contains "loose ends" and in particular concerning the fate of the leading figure "Peter the Painter". The tale is told by Mr. Eddy who himself saw part of the episode and has made "further inquiries". Although several policemen were killed and there was an actual "Siege of Sydney Street", those arrested "got free" for want of evidence of complicity in the murders! In its way the story is a vindication of the fairness of British justice, if not of its effectiveness in always "getting" the criminal—but we leave the story to our readers.

PRECEDENTS

Form 1.

Grant of Mutual Rights over Adjoining Premises to Provide for Escape in Case of Fire (*a*).

H.M. LAND REGISTRY.

LAND REGISTRATION ACTS, 1925 AND 1936.

Parish or Place.

Title No.

Property.

THIS DEED made the —— day of —— 19— BETWEEN A of *etc.* and B of *etc.* (hereinafter called the No. 8 Owners) of the one part and C of *etc.* and D of *etc.* (hereinafter called the No. 10 Owners) of the other part WITNESSETH and it is hereby agreed and declared as follows :— Parties.

1. In this deed the following expressions have the following meanings that is to say :— Definition clause.

(*A*) "*No. 8*" means the land comprised in the registered title No. —— above referred to of which land the No. 8 Owners are registered as proprietors

(B) "*No. 10*" means the land comprised in the registered title No. —— above referred to of which land the No. 10 Owners are registered as proprietors

(C) "*The right of Fire Escape*" means and includes the following rights namely (1) the right of passage (from the premises having the right) for the purpose only of bona fide escape from fire (actual or believed) or panic or other circumstances (actual or believed) dangerous to life and (2) the right of passage to the nearest public highway over or through the premises over which such right may exist by any reasonable means whether on the ground or the roof or at any intermediate stage or stages each such right to be exercisable by the owners or occupiers of the premises having the right of fire escape and all persons for the time being lawfully on such premises

(D) "*Staircases*" shall include ancillary apparatus of all kinds including exits and entrances

(E) "*Ancillary rights*" means and includes the following rights exercisable at all reasonable times namely (1) the right to maintain in position and to inspect repair and when necessary renew all or any of the staircases over which any fire escape right may exist or hereafter exist hereunder (2) the right in accordance with the provisions here-

(*a*) Stamp 10s.

inafter contained to alter existing staircases and erect new staircases and (3) to enter for the purpose of exercising any of the ancillary rights

(F) "*The appointed day*" shall mean the day on which shall expire the period of twenty-one years from the death of the last survivor of the following persons namely the parties hereto and such of the descendants of His late Majesty King George the 5th as have already been born.

ant of e escape.

2. (A) The No. 8 Owners hereby grant to the No. 10 Owners the following rights over No. 8 namely the right of fire escape and ancillary rights

(B) The No. 10 Owners hereby grant to the No. 8 Owners the following rights over No. 10 namely the right of fire escape and ancillary rights.

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3. (A) Each right of fire escape hereby granted may be exercised over all or any of the staircases now on or attached to the premises over which such right is granted

(B) All or any of the staircases on such premises may from time to time be altered in position character or otherwise in such manner as (1) to comply with the requirements of any authority (public or local) having jurisdiction in that behalf and (2) not to interfere with the passage of light or air to any existing window in such premises

(C) Nothing shall be done on such premises which shall obstruct or interfere with the stability of any such staircases or apparatus.

ıration grant.

4. Each right hereby granted (taken separately) shall only be exercisable until the appointed day and during such further period (if any) for which the same can now legally be granted.

IN WITNESS *etc.*

Form 2.

Residuary Bequest to the Testator's Widow Absolutely, with a Substitutional Bequest in the event of the Widow Predeceasing the Testator upon the Trusts Contained in the Widow's Will or arising on her Intestacy (*a*).

[Subject as hereinbefore declared] my residuary estate shall be held if my wife survives me upon trust for her absolutely but if she does not survive me then upon such trusts and with and subject to such powers and provisions as would have been applicable thereto at my death under the wills or intestacies (total or partial) of any person or persons (whether or not being my wife) dying in my lifetime or under exercises of powers of appointment conferred by will if (1) my wife had at her death been absolutely entitled in possession to my residuary estate (2) (*b*) all income accruing prior to my death had been duly received and administered and (3) no part of any beneficial interest arising under the will or intestacy (total or partial) of any person had prior to my death ever been sold mortgaged settled or otherwise transferred or charged by any act *inter vivos* or by law (but so that under this trust no pecuniary legacy or annuity or charge or power of charging shall be increased or multiplied).

(*a*) It is difficult to frame alternative trusts where it is intended that the gift to a beneficiary, who takes absolutely, is to fall into the beneficiary's estate in the event of the beneficiary predeceasing the testator. In *Re Cousins*, [1937] Ch. 381, the testator provided that should any residuary legatee predecease him, his or her share of the residue was to be held in trust "for his or her personal representatives as part of his or her personal estate". One of the legatees died in the lifetime of the testator intestate. Her estate passed to her husband, who was her sole administrator, in its entirety beneficially. He also predeceased the testator, having by his will left his estate to the deceased beneficiary's only child. Farwell, J., held that the share lapsed and fell back into residue, as there was nothing in the will which provided for the person substituted for the beneficiary as legatee himself predeceasing the beneficiary. This form is intended to annex the bequest to the beneficiary's estate so as to devolve with it. This form of gift is somewhat unsatisfactory, however, as it must be uncertain how the beneficiary will dispose of his estate. It is better if the testator can himself settle the gift over. The difficulties arising from referential settlements is illustrated by *Re Shelton's Settled Estates*, 61 T. L. R. 220.

(*b*) This avoids claims for compensation for income between the two deaths.

Form 3.

Voluntary Settlement of Investments on a Child less than one year old to avoid Income Tax and Surtax (*a*).

Parties.

THIS SETTLEMENT is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called the Settlor) of the one part and the Settlor and —— of *etc.* (hereinafter collectively referred to as the Trustees) of the other part

Recitals: desire to make settlement;

WHEREAS :—

(1) The Settlor is entitled to the investments specified in the Schedule hereto and is desirous of making such settlement thereof upon his son B (hereinafter called the Beneficiary) an infant who was born on the —— day of —— 19— as is hereinafter contained

Transfer of investments.

(2) The Settlor has transferred the said investments to the Trustees to be held by them upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

NOW THIS DEED made in consideration of the natural love and affection of the Settlor for the Beneficiary WITNESSETH and it is hereby agreed and declared as follows :—

Trust to sell or retain.

1. The Trustees shall stand possessed of the said investments specified in the said Schedule hereto UPON TRUST in their discretion either to allow the same to remain as now invested or at any time or times to sell the same or any of them and at their discretion to invest the net proceeds of sale in or upon any of the investments for the time being authorised by law for the investment of trust funds with power at their discretion to vary any such investments for others of a like nature.

Trust to apply income for maintenance or accumulate.

2. The Trustees shall stand possessed of the said investments specified in the said Schedule hereto and the investments for the time being representing the same (hereinafter called the Trust Premises) upon the trusts and with and subject to the powers and provisions following that is to say—

(1) UPON TRUST during the residue of the life of the Settlor or until the Beneficiary shall attain the age of twenty-two years or marry in the lifetime of the Settlor or shall die in such lifetime (whichever period shall be the shortest) to pay or apply the income of the Trust Premises or such part thereof as the Trustees shall in their absolute and uncontrolled discretion having regard to the age and requirements of the Beneficiary the amount of any other fund available for the

(*a*) This and the following Precedent were drafted by Mr. E. H. Bodkin, of Lincoln's Inn. Inasmuch as the child under this Precedent does not become entitled to the accumulations, there is no necessity on this ground for continuing the power of accumulation beyond the age of twenty-one. The reason for so doing is to prevent the income of the fund in the year of assessment in which the child attains twenty-one from being treated as the settlor's income for the purposes of income tax. This can validly be effected by the form of trust here adopted. The accumulations are valid, as the limiting period is the settlor's life; see Law of Property Act, 1925, s. 164 (1). Any income actually applied for maintenance will be treated as the settlor's income; but if his own income is sufficient, the trustees will not need to resort to the income of the settled fund. It seems better to give them power to do so if necessary rather than to have a trust for accumulation.

purpose and the ability of the Settlor to maintain him think fit from time to time for or towards the maintenance education or benefit of the Beneficiary and the Trustees may either so apply the said income themselves or pay the same to the Settlor for the purposes aforesaid without being liable to see to the application thereof

(2) During the period aforesaid the Trustees shall accumulate the residue (if any) of the income of the Trust Premises not so paid or applied as aforesaid in the way of compound interest by investing the same and the resulting income thereof from time to time in any of the investments hereinbefore authorised with power to vary such investments and all accumulations so produced and the investments for the time being representing the same shall be an accretion to and follow the destination of the capital of the Trust Premises

(3) The provisions for the maintenance of the Beneficiary hereinbefore contained shall be without prejudice in the event of the Settlor predeceasing the Beneficiary to the statutory provisions for maintenance during the period between the death of the Settlor and the attainment by the Beneficiary of the age of twenty-one years

Subject thereto or protective trusts for Beneficiary for life.

(4) From and after the death of the Settlor leaving the Beneficiary surviving or the attainment by the Beneficiary of the age of twenty-two years or his marriage in the lifetime of the Settlor whichever shall first happen the Trustees shall hold the income of the Trust Premises upon the protective trusts contained in section 33 of the Trustee Act 1925 for the benefit of the Beneficiary during the residue of his life

Trusts for children and issue of Beneficiary.

(5) Subject as aforesaid the capital and income of the Trust Premises shall be held upon trust for the children or remoter issue of the Beneficiary or for some or one of them at such ages or times and in such shares (if more than one) and for such interests and upon such trusts for their benefit (including protective trusts with discretionary trusts on forfeiture in favour of other objects of this present power) and with such provisions for their maintenance advancement education or benefit at the discretion of any person or persons and generally in such manner as the Beneficiary shall from time to time by deed revocable or irrevocable or by will or codicil appoint AND in default of and subject to any such appointment IN TRUST for all or any the children or child of the Beneficiary who being male attain the age of twenty-one years or being female attain that age or marry under that age and if more than one in equal shares

(6) No child of the Beneficiary who or whose issue takes any part of the Trust Premises under any appointment under the power hereinbefore contained shall (in the absence of a contrary intention expressed in such appointment) be entitled to any share in the unappointed part thereof except upon bringing the share or shares appointed to him or her or to his or her issue into hotchpot and accounting for the same accordingly.

(7) The statutory powers of maintenance and advancement shall apply

Ultimate trust.

(8) If there shall be no child of the Beneficiary who takes a vested interest under the trust hereinbefore declared then subject to any exercise of the powers hereby or by law vested in the Trustees the

capital and income of the Trust Premises shall be held IN TRUST for C absolutely (*b*).

Power to appropriate, etc.

3. The Trustees may (i) determine what moneys are to be considered as capital and what income (ii) determine what expenses costs and outgoings are properly payable out of capital or income (iii) exercise the powers of appropriation conferred by section 41 of the Administration of Estates Act 1925 without any of the consents requisite for the exercise of such powers by personal representatives (iv) determine all matters of doubt and questions arising in the execution of the trusts and powers hereof And every such determination whether express or implied shall be conclusive and binding on all persons then or thereafter to become interested under the trusts hereof.

[4. Power for Professional Trustee to charge.]

Power to appoint new Trustees.

5. The power of appointing a new trustee or new trustees hereof shall be vested in the Settlor during his life.

IN WITNESS *etc.*

THE SCHEDULE ABOVE REFERRED TO.

[*This will contain particulars of the investments settled.*]

(*b*) An ultimate trust for the settlor would not render the income liable to be treated as his income for income tax purposes, though estate duty would be payable even if the settlor survived for more than three years. But if such a trust is inserted, the protective trusts must be varied by excluding the settlor from the class in whose favour the discretionary trust on forfeiture is exercisable. This is necessary to prevent him from having an interest in the income within s. 38 of the Finance Act, 1938.

Form 4.

Will of Widower; Legacy to Daughter Conditionally on Remaining a Roman Catholic; Income of Residue to Son on express Protective Trusts giving Power on Forfeiture to Withhold and Accumulate Income; Usual Trusts for Son's Children and Issue; Provisions as to Share in Father's Estate.

I, A of *etc.* hereby revoke all testamentary dispositions heretofore made by me and declare this to be my last will.

1. I appoint X of *etc.* and Y of *etc.* (hereinafter called my Trustees) to be executors and trustees of my will. Appointment of executors and trustees.

2. (1) I bequeath to my daughter Z the sum of £— to be paid to her as soon as practicable after my death but upon condition that she shall enter into a deed of covenant with my Trustees providing that if she shall at any time (whether before or after my death) (i) cease to be a professed member of the Roman Catholic Church or publicly renounce the same or (ii) be admitted into any religious body holding beliefs contrary to those of the said Church or (iii) openly profess or observe any form of religious faith or openly profess or adopt any beliefs or tenets contrary to those of the said Church then and in any of the above events my said daughter shall repay the said legacy with interest at the rate of £— per cent. per annum to my Trustees and the same shall fall into my residuary estate Legacy to daughter conditional on remaining Roman Catholic.

(2) The decision of my Trustees as to whether any of the events hereinbefore specified have occurred shall be final and binding upon my said daughter and all other persons (if any) to be interested in the said legacy or my residuary estate

(3) My Trustees may in case of doubt (but without prejudice to the finality of their decision) obtain the opinion of Father —— or some other Priest of the Roman Catholic Church and act upon the opinion so obtained (*a*)

(4) The said deed of covenant shall be in a form to be approved by and shall be prepared by and at the cost of my Trustees

3. (1) I devise and bequeath unto my Trustees all the real and personal property of or to which I shall at my death be seised possessed or entitled or over which I shall have a general power of appointment or disposition by will (except what I otherwise dispose of by this my will or any codicil thereto) UPON TRUST that my Trustees shall sell call in and convert into money the same with power in their uncontrolled discretion to defer and postpone the sale calling in and conversion of the same or any part or parts thereof for such period as they shall think proper Devise and bequest of residue on trust for sale.

(2) Notwithstanding the trust lastly hereinbefore declared no reversionary interest shall be sold until it falls into possession unless my Trustees consider that an earlier sale would be beneficial to my estate

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(*a*) In order to prevent the condition being void for uncertainty it is necessary to specify the degree of attachment to, and the precise form of faith, required. Belief, except as indicated by outward observances, can hardly be proved except by the personal statement of the legatee. See *Clayton* v. *Ramsden*, [1943] A. C. 320; *Re Moss's Trusts*, [1945] W. N. 16.

A declaration by the legatee, though it may be conclusive evidence of his state of mind, can hardly be unbiased.

(3) The rents profits and income produced by or arising from every part of my said real and personal estate prior to the conversion or collection thereof shall be applied as if the same arose from such investments as are hereinafter directed to be made and the entirety thereof (whether arising from property or investments of an authorised or unauthorised character and whether of a wasting nature or otherwise) shall both during the first year after my death and after the expiration of such year be wholly applicable as income and no part thereof shall be treated as capital but no reversionary interest or other property which produces no income shall be treated as though it did so

(4) My Trustees shall out of the moneys to arise from the sale of my said real estate and from the sale calling in and conversion of such parts of my said personal estate as do not consist of money and out of my ready money pay my funeral and testamentary expenses the estate duty payable on my death on my residuary estate my debts and the legacies and annuities by my will or any codicil thereto bequeathed and the duty on any legacies (as well specific as pecuniary) and annuities so given free of duty (which duty is to be paid in the first place out of my personal estate or the proceeds thereof) and shall invest the residue of the same moneys in their names or (in the case of securities to bearer) under their control in any of the investments hereinafter authorised

(5) My Trustees may from time to time vary or transpose any investments directed to be made by them as aforesaid into others of a similar nature.

Trusts of residue.

4. My Trustees shall stand possessed of the residuary moneys aforesaid and the stocks funds securities and other property for the time being representing the same (hereinafter called the Trust Premises) upon the trusts and with and subject to the powers and provisions following that is to say—

Income to son for life on express protective trusts;

(1) UPON TRUST (subject as hereinafter provided) to pay the income arising from the Trust Premises to my said son during his life

(2) If any of the events mentioned in the next sub-clause hereof (hereinafter called the specified events) shall have occurred prior to my death the trust for payment of the said income to my said son during his life (hereinafter called the primary trust) shall not arise and if any of the specified events shall occur after the primary trust has arisen the same shall cease unless and until it shall again become operative under the provisions hereinafter contained

(3) The specified events shall for the purposes of this clause be the following—

(i) If my said son shall assign charge or encumber his interest under the primary trust or any part thereof or shall attempt so to do

(ii) If he shall do or attempt to do or by reason of his own act default or omission shall suffer any act or thing (other than the giving of his consent to the exercise of the statutory power of advancement herein incorporated by reference) whereby his interest under the primary trust or any part thereof becomes or would (apart from this present provision)

become vested in payable to or charged in favour of any other person or persons or corporation (*b*)

(4) In the event of the primary trust not arising or ceasing (as the case may be) my Trustees shall (unless and until the same shall become operative) during the residue of the life of my said son in their uncontrolled discretion either (i) apply the income of the Trust Premises for the maintenance support education or otherwise for the benefit of my said son and his children and remoter issue for the time being in existence or of one or more exclusively of such persons and in the case of such children or remoter issue may pay the same to my said son but so that my said son shall nevertheless not receive the same for his own use and benefit but shall be liable to account for the same if my Trustees shall so require but my Trustees shall nevertheless not be under any liability for not requiring an account of the same or (ii) accumulate the whole or any part of the said income and invest the accumulations in any investments hereinafter authorised with power to vary such investments and such accumulations and the investments representing the same shall be an accretion to and follow the destination of the capital of the Trust Premises and the income produced thereby shall be treated as income of the Trust Premises for all purposes PROVIDED nevertheless that my Trustees may in their uncontrolled discretion at any time resort to the prior accumulations and apply the same (whether then invested or not) as if they were current income (*c*)

(5) If on any date or dates after the primary trust shall have failed to arise or have determined the right to receive the income of the Trust Premises shall be or would if the primary trust had been then operative have become vested in my said son absolutely and beneficially free from incumbrances then and in that event the income accruing after such date or dates shall again be held upon the primary trust for the residue of his life subject nevertheless to determination as aforesaid in the event of any of the specified events occurring

(6) From and after the date when the youngest of the children of my said son for the time being shall attain twenty-one years (if my said son shall so long live) my Trustees shall pay or apply any income which would otherwise by reason of the exercise of their discretion have fallen to be accumulated under the provisions hereinbefore contained in the same manner as if my said son were then dead

Trusts for children and issue of son.

(7) Subject as aforesaid the capital and income of the Trust Premises shall be held IN TRUST for the children or remoter issue of my said son or for some or one of them at such ages or times and in such shares (if more than one) and for such interests and upon such trusts (including protective trusts with discretionary trusts on forfeiture in favour of other objects of this present power) for their benefit and with such provisions for their maintenance advancement education

(*b*) See *Re Gourju*, [1943] Ch. 25; *Re Biedermann*, [1922] 2 Ch. 771; *Re Hall*, [1944] 1 Ch. 46.

This form is intended so far as possible to protect the son against forfeiture by temporary confiscatory legislation.

(*c*) It may not be to the advantage of the children to apply the whole available income for their benefit, which under the statutory protective trusts they must generally do. See *Re Gourju*, *supra*: *Re Peel*, [1936] Ch. 161.

or benefit at the discretion of any person or persons and generally in such manner as my said son shall from time to time by deed revocable or irrevocable or by will or codicil appoint (*d*) And in default of and subject to any such appointment IN TRUST for all or any the children or child of my said son who being male attain the age of twenty-one years or being female attain that age or marry under that age and if more than one in equal shares

(8) No child of my said son who or whose issue takes any part of the Trust Premises under any appointment under the power hereinbefore contained shall (in the absence of a contrary intention expressed in such appointment) be entitled to any share in the unappointed part thereof except upon bringing the share or shares appointed to him or her or to his or her issue into hotchpot and accounting for the same accordingly

(9) The statutory powers of maintenance and advancement shall apply

Ultimate trust.

(10) If there shall be no child of my said son who takes a vested interest under the trusts hereinbefore declared then subject to any exercise of the powers by my said will or by law vested in my Trustees the capital and income of the Trust Premises shall be held UPON TRUST for all or any my brothers and sisters living at my death [the death of my said son] and the children or child then living of any then deceased brothers or sisters of mine who being male attain the age of twenty-one years or being female attain that age or marry under that age and if more than one in equal shares but so that the children or child of any deceased brother or sister of mine shall take (if more than one equally between them) only the share which their parent would have taken had he or she survived me [my said son].

Powers of Trustees; to advance money to son (*e*).

5. My Trustees may at any time or times if in their uncontrolled discretion they consider it expedient and in priority to the statutory power of advancement herein incorporated by reference raise and pay out of the Trust Premises to or for the benefit of my said son any sum or sums not exceeding in the aggregate the sum of £—— and my Trustees shall not be responsible for seeing to the application of any sum or sums so raised.

To invest.

6. Money subject to the Trusts hereof may be invested in or upon—

(i) The public stocks funds or Government securities of the United Kingdom or India or any colony

(ii) Securities the interest on which is guaranteed by Parliament

(iii) Bank of England or Metropolitan or London County Stock or the stock bonds debentures or other securities of any municipality county or district council public body or local authority in the United Kingdom

(iv) Bonds mortgages debentures debenture or rentcharge stock of any railway canal dock harbour gas electric water or other like company public or private incorporated by special Act of the Imperial Parliament or of the Legislature of any Colony or by Royal Charter

(*d*) A protected life interest would, without express provision, be in excess of the power.

(*e*) This power should be carefully considered, but in view of present conditions may be found useful.

or the guaranteed preference or ordinary stock or shares of any such company which shall have paid dividends upon its ordinary capital at the rate of at least 3 per cent. per annum for at least five years prior to the date of investment (*f*)

(v) Freehold or leasehold securities (whether or not by registered charge under the Land Registration Act 1925) such leaseholds having at least sixty years to run at the date of such investment

(vi) The purchase of freehold ground rents or other landed property in the United Kingdom of any tenure but as to leaseholds only if at least sixty years of the term on which the same are held is unexpired

(vii) The shares or deposits of any permanent building society registered in the United Kingdom

(viii) Any other investments for the time being authorised by law as investments for trust funds

(ix) For the purposes of this clause the expression "United Kingdom" shall mean the United Kingdom of Great Britain and Ireland and "Colony" shall mean any dominion commonwealth union dependency or colony forming part of the British Empire or any province or state having a local Legislature and forming part thereof respectively but not the Irish Free State

(x) My Trustees shall have power to make such arrangements upon the reconstruction of any company in which they hold stocks shares or securities as if they were the absolute owners of such stocks shares or securities.

To allow and accept unauthorised investments of father's estate.

7. My Trustees may permit the executors or trustees of the will of my late father to retain unconverted any investments or securities representing his residuary estate whether authorised thereby or not and shall by way of extension of the power conferred by section 22 of the Trustee Act 1925 have power in their uncontrolled discretion to accept in satisfaction *pro tanto* of my share in the proceeds of sale of such residuary estate any property for the time being representing my said share as of such value as they shall think fit (with or without any valuation) and to concur with the executors or trustees of such will or the persons beneficially interested thereunder in any partition or appropriation as if they were the absolute owners of such share.

To settle questions appropriate, etc.

8. My Trustees may

(i) determine what moneys are to be considered as capital and what as income

(ii) determine what expenses costs and outgoings are properly payable out of capital or income

(iii) if and when any instalment of contribution or indemnity under the War Damage Act 1943 or any statute amending or re-enacting the same becomes due and payable and there is no money in hand representing capital and if in their opinion it shall be impracticable or for any reason inadvisable to raise money out of capital for the purpose discharge the same out of the income of the Trust Premises or any part thereof

(*f*) Power to invest in any company may be added if it is desired to invest in industrial shares. Power to purchase a residence may be desirable, if not sufficiently provided for by the power to advance money to the son.

(iv) exercise the power of appropriation conferred by section 41 of the Administration of Estates Act 1925 without any of the consents requisite by statute for the exercise of such power by personal representatives

(v) determine all matters of doubt and questions arising in the execution of the trusts and powers of my will

AND every such determination whether express or implied shall be conclusive and binding upon all persons then or thereafter to become interested under the trusts aforesaid.

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9. Any executor or trustee for the time being hereof who is a solicitor or engaged in any profession or business shall be entitled to charge and retain in priority to any other bequests all usual professional or other charges for business done by him or his firm in relation to the trusts of my will including acts which an executor or trustee could have done personally.

IN WITNESS *etc.*

Form 5.

Deed by a Widow, who is Tenant for Life under her Husband's Will of his Estate, Renouncing her Right to have the Reversion Expectant on her own Life Interest in Marriage Settlement Funds Sold. Provision Appropriating the Settled Funds in Shares and Extending the Powers of Investment of the Trustees in respect of one Share (*a*).

THIS DEED made the —— day of —— BETWEEN A of *etc.* (hereinafter called Mrs. A) of the first part B of *etc.* (hereinafter called Mrs. B) of the second part C of *etc.* (hereinafter called Mr. C) of the third part D of *etc.* and E of *etc.* (hereinafter called the Settlement Trustees) of the fourth part and F of *etc.* and G of *etc.* (hereinafter called the Will Trustees) of the fifth part. Parties.

WHEREAS :— Recitals

(1) By a settlement (hereinafter called "the Settlement") dated the —— day of —— 19— and made between H (hereinafter called the Settlor) of the first part Mrs. A of the second part and the Settlement Trustees of the third part (being a settlement made in contemplation of the marriage shortly afterwards solemnised between the Settlor and Mrs. A) the husband's fund therein referred to was settled upon trust to pay the income thereof to the Settlor during his life and after his death to Mrs. A until her death or second marriage and subject as aforesaid upon trust for the issue of the marriage as therein provided and in the event of there being no issue of the marriage who should live to attain a vested interest then upon trust for the Settlor absolutely and power was thereby given to the trustees thereof to invest the husband's fund in any investments for the time being authorised by law for the investment of trust funds marriag settleme

(2) By his will dated the —— day of —— 19— after appointing the Will Trustees to be executors and trustees thereof and after exercising a power of appointment which does not affect this deed the Settlor appointed devised and bequeathed all his property unto the Will will of settlor;

(*a*) Stamp to be adjudicated. It would seem that this deed should be stamped 10s. However, as the widow is renouncing her right to have the reversion expectant on her own life interest under her marriage settlement sold and invested for her benefit, the stamping authorities may take the view that the renunciation is a voluntary disposition *inter vivos* within s. 74 of the Finance (1909–10) Act, 1910, and is chargeable with *ad valorem* stamp duty on the value of the widow's interest which she renounces.

This form is designed to meet the difficulty which arises on the application of the rule in *Rowlls* v. *Bebb*, [1900] 2 Ch. 107. Under that rule when property is given by will on trust for conversion and investment and to hold the investments on trust for a tenant for life and remainderman with a discretionary power to the trustees to postpone the conversion, and a provision that the income until conversion is to go to the tenant for life, that provision extends to property (such as a reversionary interest) which is not producing income as well as to property of a wasting character. Accordingly, on any sale of the property the proceeds must be apportioned between the tenant for life and the remaindermen on the principle laid down in *Re Earl of Chesterfield's Trusts*, 24 Ch. D. 643. Where under the trusts of a marriage settlement the husband's fund is held upon trust for him absolutely, subject to the life interest of his widow, and by his will he gives a life interest in his estate to his widow, it frequently happens that the fact that the reversion under the settlement should be sold is forgotten. It is generally clear that the testator would not wish this done and it is advisable for the widow to renounce all her rights to require a sale and her right to any income in respect of the reversion, so that no question may arise on her death and her personal representatives may not claim any part of the reversion when it falls into possession.

Trustees upon trust to convert into money such part as did not consist of money and after payment of his debts funeral and testamentary expenses to invest the balance remaining and his ready money (thereinafter and hereinafter referred to as the residue) with power from time to time to vary such investments and the Settlor directed that his trustees should hold the residue upon trust to pay the income thereof to his wife Mrs. A during her life if she should so long continue his widow and after certain trusts for his children the Settlor directed that in the event of no issue of his attaining a vested interest in the corpus of the residue the residue should be held (subject to the trusts therein mentioned in favour of his wife) upon trust for his sister Mrs. B and his brother Mr. C in equal shares

(3) The Settlor died on the —— day of —— 19— without having had any children and his said will was duly proved by the Will Trustees on the —— day of —— 19—

(4) The husband's fund is now represented by the investments specified in the Schedule hereto

(5) Doubts have arisen whether in fact the reversionary interest in the husband's fund to which at the time of his death the Settlor was entitled absolutely subject only to Mrs. A's life interest therein should not have been sold and realised by the Will Trustees

(6) It has been agreed between the parties hereto that Mrs. A shall renounce her right (if any) to have the reversionary interest in the husband's fund sold and realised and further that the investments now representing the husband's fund shall be appropriated and the investments which are set out in Part I of the Schedule hereto shall be held as the reversionary moiety of Mrs. B and the investments set out in Part II of the Schedule hereto shall be held as the reversionary moiety of Mr. C and that this Deed should also contain the several agreements hereinafter declared and contained

Now in consideration of such agreements and of the premises THIS DEED WITNESSETH as follows :—

1. Mrs. A with the approbation and consent of Mrs. B and Mr. C hereby directs the Will Trustees not to sell and get in the said reversionary interest in the husband's fund hereinbefore referred to but to retain such interest as a reversionary and unrealised interest to the intent that the same shall be held by them free from the right (if any) of Mrs. A her executors or administrators to share in the proceeds of sale of such reversion or any part thereof any rule of equity to the contrary notwithstanding PROVIDED ALWAYS that nothing herein contained shall affect or modify the life interest of Mrs. A under the trusts of the settlement.

2. The Settlement Trustees with the consent and by the direction of Mrs. B and Mr. C hereby appropriate the investments specified in Part I of the Schedule hereto to the moiety of the husband's fund held on trust for Mrs. B and hereby appropriate the investments specified in Part II of the said Schedule to the moiety of the husband's fund held on trust for Mr. C.

3. Mrs. A and Mr. C being the only persons interested in the investments specified in Part II of the Schedule hereto with the consent and approbation of the Will Trustees hereby authorise and direct the Settlement Trustees to sell such of the said investments as they

shall from time to time direct and to invest the net proceeds of sale in the purchase of or at interest upon the security of such stocks funds and shares or securities or other investments of whatsoever nature and wheresoever and whether involving liability or not and/or upon personal credit with or without security as the Settlement Trustees shall in their absolute discretion think fit to the intent that the Settlement Trustees shall have the same full and unrestricted powers of investing and transposing investments so appropriated to Mr. C's moiety as aforesaid as if they were absolutely entitled thereto beneficially.

Indemnity to settlement trustees.

4. Mrs. A and Mr. C according to their respective rights and interests do and each of them doth release the Settlement Trustees and each of them their and each of their executors administrators estates and effects from all actions proceedings claims or demands in respect of or in connection with any investment to be made by the Settlement Trustees under or by virtue of clause 3 hereof and hereby covenant respectively with the Settlement Trustees at all times hereafter to indemnify and keep indemnified the Settlement Trustees and each of them and their respective executors and administrators and the trustees or trustee of the Settlement from all actions proceedings claims and demands costs damages and expenses on account of any investment so made as aforesaid under or by virtue of clause 3 hereof and Mrs. A and Mr. C hereby charge all the property mentioned in Part II of the said Schedule and all their estate and interest therein and the rents profits and income thereof with payment of all moneys which may become payable under or by virtue of the covenant by Mrs. A and Mr. C hereinbefore contained.

IN WITNESS *etc.*

THE SCHEDULE.

PART I.

[*Investments appropriated to Mrs. B.*]

PART II.

[*Investments appropriated to Mr. C.*]

Form 6.

Deed by a Widow giving up her Right to receive a Tax-free Annuity Charged on her Husband's Estate in Exchange for a Right to receive the entire Income during her Life (*a*).

Parties.

THIS DEED is made the —— day of —— 19— between A of *etc.* of the first part B of *etc.* of the second part and C of *etc.* and D of *etc.* (hereinafter called "the Trustees") of the third part

(*a*) Stamp 10s. as a deed of family arrangement. This deed is intended to meet the case where a testator has given a tax-free annuity to his widow charged on capital and the balance of income to his child. It frequently happens that, owing to the rise in the rate of income tax, the trust income is insufficient to provide for the annuity and recourse to capital on a large scale is necessary. Such recourse involves the payment of a due proportion of the sums so annually raised to the Revenue for income tax and surtax, thus seriously diminishing the capital without advantage to the

Recitals: testator's will;

Whereas :—

(1) By his will dated the —— day of —— 19— X (hereinafter called "the Testator") after appointing the Trustees to be executors and trustees and making certain pecuniary bequests gave to his wife the said A an annuity for and during her life of £—— to be paid to her free and clear of income tax out of his personal estate by two half-yearly payments the first payment thereof to be made six months after his death and after certain bequests and gifts of other annuities not expressed to be given free of tax the Testator gave and bequeathed all his personal estate not therein otherwise disposed of unto his Trustees upon trust for sale and conversion and with and out of the moneys produced by such sale and conversion to pay his funeral and testamentary expenses and debts and the legacies and annuities bequeathed by his will or any codicil thereto and the duties upon such legacies and annuities and at the discretion of his Trustees to invest the residue of the said moneys as therein mentioned and the Testator declared that the annuities thereby bequeathed and the duties thereon should be primarily payable out of income but that any insufficiency should be made good out of capital and the Testator gave and bequeathed to his Trustees all his residuary trust moneys and the investments for the time being representing the same (thereinafter and hereinafter called "his residuary estate") in trust for his son the said B absolutely

Death of testator: probate;

(2) The Testator died on the —— day of —— 19— and his said will together with a codicil not affecting this deed was duly proved in the —— Probate Registry —— on the —— day of —— by the Trustees

Deficiency in income;

(3) The income of the residuary estate of the Testator has been and still is insufficient to pay the said annuity of £—— free of income tax and the other annuities bequeathed by the said will and the Trustees have from time to time raised by sales of capital sufficient sums after payment of tax thereon to provide the balance of the sum of £—— free of tax and the other annuities

Agreement by annuitant to limit her rights to the actual income.

(4) The said A and B being desirous that recourse should no longer be made to capital to provide for the payment of the said annuity of £—— free of tax have agreed that as from the —— day of —— 19— no part of the said annuity shall be paid out of capital but that the said A shall receive (after providing for the other annuities bequeathed by the will and codicil of the Testator) the net income of the Testator's residuary estate that is to say the sum then representing income of the Testator's residuary estate after the deduction of income tax at the standard rate in force from time to time and without any right to call on the executors to discharge any liability to surtax on the said sum.

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widow. It may be a fair arrangement for the widow to agree to take the entire income of the estate, whether more or less than the annuity, in satisfaction of her rights under the will. This plan preserves capital and gives the widow the benefit of any future increase of income from the estate in compensation for her immediate loss of income. The scheme may, however, result in an increase in liability to duty on the widow's death, as the Estate Duty Office might claim that the life interest taken by the widow in the entire residue, to the extent to which it exceeded the annuity, was the creation of a new life interest and duty was payable on its cesser but, if the income is liable to be less than the annuity, such a claim would not be formulated. This scheme is only practicable where there is no settlement of the income subject to the annuity on persons who have no power to agree to the widow taking the entirety.

Now in pursuance of the said agreement and in consideration of the said A's love and affection for her son the said B and of her desire to preserve the capital of the residuary estate of her husband the Testator

THIS DEED WITNESSETH and it is hereby agreed and declared as follows :—

1. The words in the will whereby the Testator gave to his wife the said A an annuity for and during her life of £—— to be paid to her free and clear of income tax out of his personal estate shall be read and have effect as if the words " but not surtax " had been inserted after the words " income tax ". Variation of terms of will: as to payment of surtax;

2. The words in the will whereby the Testator declared that the annuities bequeathed by his said will were to be paid primarily out of income but that any insufficiency was to be made good out of capital shall be read and have effect in relation to the said annuity bequeathed by the Testator to the said A as if the word " primarily " and the words " but any insufficiency shall be made good out of capital " had been deleted. as to right to resort to capital.

3. The Trustees shall in every year during the remainder of the life of the said A pay to her in settlement of her claim to the said annuity of £—— a sum equal to the amount of the income of the Testator's residuary estate (after providing for the other annuities bequeathed by the will for the time being payable) subject to the deduction therefrom of income tax at the standard rate in force from time to time. Provision for payment of income.

4. Any sums properly payable for income tax or surtax in respect of any payments heretofore made to the said A for or on account of the said annuity of £—— shall as far as is necessary be raised and paid by the Trustees out of the capital of the Testator's residuary estate. Provision for payment of past surtax.

IN WITNESS *etc.*

Form 7.

Assignment by the Statutory Next of Kin of all their Interest in an Intestate's Estate to his Widow to the intent that the Whole Estate shall vest in the Widow Absolutely and Release of the Administrators (*a*).

THIS DEED is made the —— day of —— BETWEEN A of *etc.* B of *etc.* and C of *etc.* (hereinafter called " the next of kin ") of the first part D of *etc.* of the second part and the said D and E of *etc.* (hereinafter together called " the administrators ") of the third part Parties.

WHEREAS (*b*) X died on the —— day of —— intestate and letters of administration to his estate were on the —— day of —— granted out of the —— Probate Registry to the administrators Recitals: death of intestate;

AND WHEREAS the administrators have got in the personal estate of the said X and have paid thereout his funeral testamentary expenses debts and death duties payable on his death payment of debts, etc.;

(*a*) Stamp *ad valorem* on the value of the reversionary interests, to be adjudicated.

(*b*) Where the intestate's estate is of substantial value, and the next-of-kin are proposing to assign all their interest to the widow, the assignment should contain reasonably full recitals so that the next-of-kin may have full knowledge of what they are giving up.

AND WHEREAS the said X left him surviving his widow the said D and two sisters namely the said A and B and a nephew the said C (being the only child of his deceased brother F) who are his statutory next of kin and all of whom have attained the age of twenty one years

AND WHEREAS the administrators have transferred to the said D all the personal chattels of the said X and the sum of £1,000 together with interest thereon at the rate of five per cent. per annum from the date of the death of the said X until payment as the said D doth hereby acknowledge

AND WHEREAS the net residuary estate of the said X now consists of the personal estate specified in Part I of the Schedule hereto and of the real (*c*) estate specified in Part II of the said Schedule being of the aggregate value of £——

AND WHEREAS the administrators of the testator hold such residuary estate under section 46 of the Administration of Estates Act 1925 upon trust for the said D during her life and subject to her life interest upon trust for the said A B and C in equal shares

AND WHEREAS the said A B and C desire that the whole of the residuary estate of the said X shall be held upon trust for the said D absolutely freed and discharged from any trust in their own favour and have agreed with the said D to vest all their said interest in the said residuary estate in her in manner hereinafter appearing.

NOW THIS DEED WITNESSETH in pursuance of the premises as follows :—

1. The said A B and C as beneficial owners hereby assign unto the said D ALL THOSE their respective shares and interests in the residuary estate of the said X expectant on the death of the said D TO HOLD unto the said D absolutely to the intent that the life interest of the said D may merge in and be extinguished in the reversion thereof hereby assigned.

2. [*Statement as to the value if required.*]

3. The said D (*d*) hereby covenants with the said A B and C and each of them that she the said B will when and as soon as any duty or duties shall become payable in respect of the reversionary interests hereby assigned pay and discharge the same and will at all times keep the said A B and C and each of them and their and each of their executors and administrators effectually indemnified against the same and every part thereof and against all actions proceedings costs charges claims and demands whatsoever in respect thereof.

4. The said A B and C according to their respective rights and interests and each of them doth hereby release the said D and E and each of them their and each of their executors administrators estates and effects from all actions proceedings claims and demands in respect

(*c*) This assignment will not affect the legal title to any land. After its execution the land can be vested in the widow by simple assents. It would be convenient for the assents to be executed immediately after the assignment, then the assents can be sent to be adjudicated as not requiring stamping at the same time as this assignment is stamped.

(*d*) Succession duty will have attached to the property, which should be commuted and paid by the administrators before all the estate is transferred to the widow. It must also be remembered that if any of the next-of-kin dies within three years of the assignment estate duty will be payable on the interest of the one so dying. The administrators should retain sufficient of the estate to discharge this duty if it becomes payable.

of or in connection with the estate of the said X and every part thereof and the investments and property from time to time representing the same and the income thereof respectively.

IN WITNESS *etc.*

THE SCHEDULE.

PART I.

[*To contain particulars of the personal estate.*]

PART II.

[*To contain particulars of the real estate.*]

Form 8.

Deed of Covenant on Divorce Providing an Annuity for a Wife and Allowances for Infant Children in consideration of the Wife not applying to the Court for Maintenance. Provision for Additional Allowances to meet Increased Cost of Living. Short Form (*a*).

THIS DEED is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Settlor") of the first part B of *etc.* (hereinafter called "the Beneficiary") of the second part and C of *etc.* and D of *etc.* (hereinafter called "the Trustees") of the third part. Parties.

WHEREAS :— Recitals:

(1) The Settlor intermarried with the Beneficiary on the —— day of —— 19—. marriage.

(2) There is issue of the said marriage now living two children and no more namely E born on the —— day of —— and F born on the —— day of ——. Issue of marriage.

(3) The said marriage was dissolved by a decree absolute pronounced by the Probate Divorce and Admiralty Division (Divorce) of the High Court of Justice on the —— day of —— upon the petition of the Beneficiary. Dissolution of marriage.

(4) The Beneficiary has consented to refrain from presenting a petition for maintenance in consideration of the payments which the Settlor has agreed to make in manner hereinafter appearing. Agreement

NOW THIS DEED WITNESSETH in pursuance of the premises as follows :—

1. The Settlor hereby covenants with the Beneficiary and as a separate covenant with the Trustees to pay during the joint lives of himself and the Beneficiary until she remarries to the Trustees or the survivor of them or other the Trustees for the time being of this deed the following sums :— Covenants

(i) An annual sum equal to one equal fourth part of the net income of the Settlor for the preceding financial year for income tax purposes remaining after payment of all income tax in respect thereof or such a sum as after deducting income tax at the current rate will leave a net annual sum of £—— whichever is the least To pay annuity;

(*a*) Stamp *ad valorem* on the payments covenanted to be made.

to pay cost-of-living bonus;

(ii) So long as the increased cost of living exceeds by 20 per cent. or more the average cost of living on the first day of September 1939 such further sum as after deducting income tax at the current rate will leave a net annual sum of £——

to pay allowance for children.

(iii) So long as the Settlor's said two children or either of them are living with and maintained by the Beneficiary a sum of £— a week for each such child until such child leaves school and is able to earn £— a week.

Definition clause

PROVIDED ALWAYS that for the purposes of sub-clause (ii) hereof "the average cost of living" shall be the average cost of living as estimated in the official cost-of-living index figures published by the Ministry of Labour or other Government body from time to time and such figures shall be conclusive and binding on all parties notwithstanding the fact that the items on which the official cost-of-living index is calculated are varied from time to time and if any dispute difference or question shall arise between the parties as to the official cost-of-living index figures or the same shall cease to be published by the Ministry of Labour or other Government body the sum (if any) to be paid under sub-clause (ii) hereof shall be referred to a sole arbitrator pursuant to the Arbitration Acts 1889 to 1934.

Date of payments.

2. The several aforesaid payments shall be payable by weekly instalments on the first day of each week.

Trust for beneficiary.

3. The Trustees shall stand possessed of the aforesaid payments upon trust for the Beneficiary.

Payments to be made by beneficiary.

4. The Beneficiary shall out of the provisions made by this Deed or otherwise provide and pay for all such necessary and other board lodging clothing medical expenses not exceeding £—— in any quarter and any things which may be required for the support and maintenance of the said E and F.

Covenant to pay medical expenses and school fees of children.

5. The Settlor hereby further covenants with the Beneficiary and as a separate covenant with the Trustees that he will pay FIRST so long as any sums are payable under clause 1 (iii) hereof any dental or medical expenses incurred on behalf of the said E and F which exceed in any three calendar months the sum of £—— PROVIDED THAT the Settlor shall not be bound to make any payment on account of such dental or medical expenses (except in case of emergency) unless he has previously approved in writing such expenditure SECONDLY the expenses of the education of the said E and F at any school or university or training or technical college PROVIDED that the Settlor shall have previously consented in writing to such expenses being incurred.

Agreement not to apply for maintenance.

6. The Beneficiary hereby agrees that so long as the Settlor shall punctually pay the said payments as and when they become due she will not proceed with any petition for maintenance or permanent alimony against the Settlor.

Covenant to provide for beneficiary by will.

7. The Settlor hereby further covenants with the Beneficiary and as a separate covenant with the Trustees to bequeath by his will to the Beneficiary in the event of her surviving him the sum of £——.

Power to appoint trustees.

8. The power of appointing a new Trustee or new Trustees hereof is vested in the Settlor during his life.

IN WITNESS *etc.*

Form 9.

Mortgage by the Proprietors of a Business of the Leasehold Premises where the Business is carried on Together with the Goodwill and Takings of the Business. Provisions for the Continuance of the Business and the Maintenance of all Government Licences and Permits (*a*).

Parties.

THIS MORTGAGE made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Borrower" which expression shall include the estate owner or estate owners of the leases hereby charged) of the one part and B of *etc.* and C of *etc.* (hereinafter called the Mortgagees which expression where the context so admits shall include their successors and assigns) of the other part

Recitals: leasehold title of Borrower;

WHEREAS this deed is Supplemental first to an Assignment dated the —— day of —— 19— and made between D of the one part and the Borrower of the other part (hereinafter called the first principal deed) being an assignment to the Borrower of a Lease dated the —— day of —— 19— and made between E of the one part and the said D of the other part whereby certain shop premises situate at —— known as —— therein more particularly described were demised to the said D for a term of —— years from the —— day of —— 19— at the yearly rent of £—— inclusive (except water rate) Secondly to a Lease dated the —— day of —— 19— and made between F of the one part and the Borrower of the other part (hereinafter called the second principal deed) being a lease of a dwelling-house and shop known as No. — situate at —— to the Borrower for the term of —— years from the —— day of —— 19— at the yearly rent after the first year of the said term of £—— per annum and Thirdly to a Lease dated the —— day of —— 19— and made between G of the one part and the Borrower of the other part (hereinafter called the third principal deed) being a Lease of a certain shop messuage or tenement known as —— situate at —— in the County of —— to the Borrower for the term of —— years from the —— day of —— 19— at the yearly rent of £—— AND WHEREAS the Borrower has for some time past carried on the business of —— in the said leasehold premises vested in him under the first second and third principal deeds AND WHEREAS the Mortgagees have agreed with the Borrower to lend to him the sum of £—— upon having the repayment thereof with interest thereon at the rate hereinafter mentioned secured in manner hereinafter appearing

agreement for loan.

Witnesseth

NOW THIS DEED made in pursuance of the said agreement and in consideration of the sum of £—— now paid to the Borrower by the Mortgagees (the receipt whereof the Borrower hereby acknowledges) WITNESSETH as follows:—

Covenant for payment of principal.

1. THE Borrower hereby COVENANTS with the Mortgagees to pay to the Mortgagees or any person authorised by them to demand the same on demand the sum of £—— with interest thereon in the meantime at the rate of £— per cent. per annum from the date of this deed.

(*a*) Stamp 2s. 6d. per £100 or part of £100, but see Stamp Act, 1891.

Covenant for payment of interest.

2. AND further until such demand shall be made and complied with to pay in part payment of such interest to the Mortgagees interest at the rate aforesaid by equal quarterly payments on the usual quarter days in every year on the principal moneys for the time being remaining due on this security.

Assignment of leasehold premises.

3. THE Borrower as beneficial owner hereby demises unto the Mortgagees ALL AND SINGULAR the property and premises assigned or demised by the said first second and third principal deeds TO HOLD unto the Mortgagees henceforth for all the respective residues now unexpired of the said several terms of years created by the said Lease of the —— day of —— 19— and the second and third principal deeds except the last ten days of each of such terms subject to the proviso for redemption hereinafter contained.

Assignment of goodwill.

4. THE Borrower as beneficial owner hereby assigns unto the Mortgagees ALL THAT goodwill and connection of the business of —— now carried on by the Borrower in the said several premises hereinbefore demised and also all moneys to be received by or to become owing to him the Borrower in respect of the said business TO HOLD unto the Mortgagees subject to the proviso for redemption hereinafter contained.

Proviso for redemption.

5. PROVIDED ALWAYS that if the Borrower shall pay to the Mortgagees the sum of £—— and interest at the times and in manner hereinbefore mentioned pursuant to the covenant in that behalf hereinbefore contained then and in such case the terms hereby created shall absolutely cease and determine or merge in the respective reversions immediately expectant thereon and the Mortgagees shall at the request and cost of the Borrower reassign to the Borrower the premises hereinbefore assigned.

6. THE Borrower hereby COVENANTS with the Mortgagees and it is hereby agreed and declared as follows :—

Covenant to repair and insure;

(1) That the Borrower will during the continuance of this security keep all messuages buildings and property machinery and stock-in-trade now or for the time being comprised in or subject to this security in good and substantial repair and in perfect working order and insured against loss or damage by fire to the full value thereof in the —— Insurance Office or in some other insurance office to be approved of in writing from time to time by the Mortgagees in the joint names of the Borrower and the Mortgagees and will duly and punctually pay all premiums and other moneys necessary for effecting and keeping up such insurance immediately on the same becoming due or within one week thereafter and will on demand produce to the Mortgagees the policy or policies of such insurance and the receipt for every such payment and that if default shall at any time be made by the Borrower in keeping the said premises or any of them or any part thereof in good and substantial repair and in proper working order or in effecting or keeping up such insurance as aforesaid or in producing any such policy or receipt to the Mortgagees on demand the Mortgagees may repair or keep the said premises or any part thereof in repair and put the same into proper working order (with power to enter upon the mortgaged premises for that purpose) and may insure and keep the same insured in any sum not exceeding £—— And that all moneys expended

by the Mortgagees under this provision shall be deemed to be properly paid by them

to carry on business;

(2) That during the continuance of this security the Borrower will carry on the business of —— upon the several properties hereby mortgaged and will keep proper books of account of the said business and make full entries therein of all the dealings and transactions of the said business and will keep such books and all letters papers and documents belonging to or relating to the said business upon the respective mortgaged premises or with the consent of the Mortgagees upon one of them and will at all times (if required) produce the same for the inspection of the Mortgagees or allow them or any person appointed in writing by them to have free access thereto and to make copies and extracts of and from the same

to maintain licences.

(3) The Borrower will apply for and use his best endeavours to obtain annually (or oftener if necessary) all necessary licences and permits from the local authority or authorities or from any Government Department or Departments which are now or may hereafter become necessary for the due carrying on of the said business of —— and will not do or suffer any act matter or thing where any existing licence or permit or any licence or permit obtained hereafter for the time being in force may be forfeited or the renewal thereof refused

Power of sale:

(4) The Mortgagees may at any time or times after the execution of this deed sell the mortgaged premises or any part thereof in like manner as if the statutory power of sale had arisen and the provisions of the Law of Property Act 1925 relating to the exercise of the statutory power of sale except the provisions restricting the exercise thereof contained in section 103 of the said Act and all the provisions of the said Act with reference to sales effected thereunder shall apply respectively to the power of sale hereby conferred and to any sale effected thereunder as if such power were the statutory power PROVIDED ALWAYS that the Mortgagees shall not exercise the power of sale hereby conferred unless and until the happening of any or either of the events following that is to say :—

on bankruptcy, etc.:

(i) If the Borrower shall become bankrupt or have a receiving order made against him or enter into any arrangement or composition for the benefit of his creditors

on infringement of statutory requirements;

(ii) If the Borrower shall during the continuance of this security be found guilty by any Court of competent jurisdiction of any offence against any regulation order or Act relating to the sale disposal purchase or acquisition of any goods or property manufactured or otherwise which may at any time be or have been upon the respective mortgaged premises or any of them

on execution or distress:

(iii) If the mortgaged property or any part thereof or any chattels thereon belonging to the Borrower other than chattels belonging to any tenant or tenants of the Borrower or a person not entitled to redeem the mortgaged premises shall be taken in execution or if any chattels on the mortgaged property shall be taken under a distress for rent reserved by the said Lease of the —— day of —— 19— or the second or third principal deeds

on failure to perform covenants of leases;

(iv) If the Borrower shall neglect or omit to perform and observe the covenants by the lessee and conditions contained in the said Lease

of the —— day of —— 19— or the second or third principal deeds or to keep the Mortgagees indemnified against all actions and proceedings costs damages expenses claims and demands by reason of the non-payment of the rent reserved by any of the said deeds or any part thereof or of the breach non-performance or non-observance of the said covenants and conditions or any of them

on death or failure to perform covenants herein.

(v) If the Borrower shall die or shall break or fail to observe any of the covenants or provisions on his part herein contained or shall give or execute a bill of sale over any of his chattels or effects or shall give any promissory note or accept or endorse any bill of exchange (except in the ordinary course of business) or suffer any of his goods to be taken in execution or under a distress for rent rates or taxes or shall cease to carry on the said business on the mortgaged premises or any one of them.

Charge of mortgagees' expenses with interest.

(7) ALL costs charges and expenses properly incurred hereunder by the Mortgagees and all moneys properly paid by the Mortgagees shall together with interest thereon at the rate of £— per cent. per annum be charged on the property for the time being subject to this security and shall on the same being paid be repaid on demand to the Mortgagees by the Borrower with interest thereon from the time of payment at the rate aforesaid and until such demand shall be made and complied with the Borrower shall in part payment of such interest pay to the Mortgagees interest at the rate aforesaid on the moneys so paid and for the time being not yet repaid on the respective days hereinbefore appointed for payment of interest on the said principal sum of £—— PROVIDED that the charge hereby conferred shall be in addition and without prejudice to any and every other remedy lien or security which the Mortgagees may or but for the said charge would have for the moneys thereby secured or any part thereof.

IN WITNESS *etc.*

Form 10.

Disclaimer and Release by a Surviving Spouse of the Statutory Life Interest in the Residuary Estate of the Deceased to the Intent that Children may take the Whole Estate immediately in Possession. Provisions exempting the Statutory Legacy of £1,000 from the Disclaimer (*a*).

This deed is made the —— day of —— 19— BETWEEN A of *etc.* of the one part and the said A and B of *etc.* (hereinafter called together "the Administrators") of the other part Parties.

WHEREAS :— Recitals:

(1) C (hereinafter called "the Intestate") died on the —— day of —— 19— intestate and letters of administration to his [her] estate were on the —— day of —— 19— granted out of the —— Probate Registry to the Administrators Death of Intestate;

(2) The Intestate left him [her] surviving his wife [her husband] the said A and three children namely D E and F all of whom have attained the age of twenty-one years family of Intestate;

(3) The residuary estate of the Intestate is now held by the Administrators in accordance with the provisions of section 46 of the Administration of Estates Act 1925 upon trust to transfer the personal chattels of the Intestate to the said A and to pay to him [her] the net sum of £1,000 free of duties and costs with interest thereon from the date of the death of the Intestate at £5 per cent. per annum and subject as aforesaid upon trust as to one half thereof for the said A during his [her] life and subject to such life interest upon trust for the said D E and F in equal shares Trust for children;

(4) The said A is desirous of disclaiming and releasing all beneficial interest in the residuary estate of the Intestate to the intent that the whole residuary estate may vest forthwith absolutely in the said D E and F in possession desire to renounce;

[*or* The Administrators have transferred to the said A all the personal chattels of the Intestate and have paid to him [her] the net sum of £1,000 free of all death duties and costs with interest thereon from the date of death at the rate of £5 per cent. as the said A doth hereby acknowledge and the said A is desirous of disclaiming and releasing his [her] life interest in one half of the remainder of the residuary estate to the intent that the whole balance of such residuary estate may vest forthwith absolutely in the said D E and F in possession

or The Administrators have transferred to the said A the personal chattels of the Intestate but have not paid to him the net sum of £1,000 with interest thereon at the rate of £5 per cent. from the date of the death of the Intestate and the said A is desirous of disclaiming and

(*a*) Stamp *ad valorem* on the value of the interests released. The stamp should be adjudicated.

Where a surviving spouse does not wish to take the benefits conferred on him by s. 46 of the Administration of Estates Act, 1925, or his or her life interest with ultimate residue, a disclaimer and release of such interest should be made and the administrators can then transfer the estate to the children or other next-of-kin. When the estate includes land, the land can be vested by simple assent in the children; such assent should contain no recitals of the equitable title. The disclaimer of the life interest of the surviving husband or wife will operate only in equity and should not by recital or otherwise be brought on to the legal title.

releasing his life interest in one half of the residuary estate of the Intestate to the intent that such residuary estate may vest forthwith in the said D E and F]

NOW THIS DEED WITNESSETH that in pursuance of the premises and in consideration of the natural love and affection of the said A for the said D E and F the said A doth hereby wholly and absolutely disclaim and release all that his life and other interest in the residuary estate of the Intestate in favour of the said D E and F to the intent that the same may forthwith vest absolutely in the said D E and F as tenants in common in equal shares as if the said A had predeceased the Intestate [*or* the said A doth hereby wholly and absolutely disclaim and release all his life interest in one half of the residuary estate of the Intestate in favour of the said D E and F to the intent that the same may forthwith vest absolutely in the said D E and F PROVIDED ALWAYS that nothing herein contained shall operate as a disclaimer or release of the beneficial interest of the said A in the said sum of £1,000 with interest thereon at £5 per cent. from the date of the death of the Intestate payable out of the residuary estate of the Intestate to the said A under the provisions of the said Act as aforesaid].

IN WITNESS *etc.*

Form 11.

Release by an Annuitant of the Right to Resort to the Capital of a Testator's Residuary Estate in Consideration of one Capital Payment thereout. Alternative Provisions when the Capital Payment is made by one of the Beneficiaries out of his own Moneys (*a*).

arties. THIS DEED is made the —— day of —— 19— BETWEEN A of *etc.* of the first part B of *etc.* of the second part and C of *etc.* and D of *etc.* (thereinafter called "the Trustees") of the third part

ecitals: WHEREAS :—

ill; X (hereinafter called "the Testator") duly made his will dated the —— day of —— 19— and after appointing his Trustees to be executors and trustees thereof and making certain bequests gave to the said A during his life an annuity of £—— and devised and bequeathed all his real and personal estate to the Trustees upon trust to sell the same and after payment of his funeral and testamentary expenses and debts the said legacies and the said annuity to stand possessed of the net residue upon trust for the said B absolutely [*or* to stand possessed of the net residue upon trust to invest the same as therein provided and to hold such investments upon trust to pay the income thereof to B during his life and after his death upon trust for B's children or remoter issue as therein provided]

ath of stator; AND WHEREAS the testator died on the —— day of —— 19— and his said will was on the —— day of —— 19— duly proved in the —— Probate Registry by the Trustees

yment debts; AND WHEREAS all the Testator's funeral and testamentary expenses

(*a*) Stamp *ad valorem* on the capital sum paid to the annuitant.

and debts and the pecuniary legacies bequeathed by his will have been duly proved and satisfied

payment of annuity: AND WHEREAS the said annuity of £—— has been duly paid to the said A to the date of these presents as the said A doth hereby acknowledge

insufficiency of income; AND WHEREAS since the death of the Testator the income of his residuary estate has in each year been insufficient to pay the said annuity of £—— to the said A in full and the Trustees have had each year to sell sufficient of the capital of the residuary estate to make good such insufficiency of income

agreement. AND WHEREAS the said B is desirous of stopping the annual resort to capital to make good any future insufficiency of the income of the residuary estate and the said A has agreed with the said B to accept the sum of £—— to be raised out of the capital of the residuary estate in satisfaction of his right to resort to capital in the event of the income of the residuary estate being insufficient in any future year or years to pay his said annuity in full

[*or* AND WHEREAS the said B is desirous of stopping the annual resort to capital to make good any future insufficiency of the income of the residuary estate and the said A has agreed to accept the sum of £—— in satisfaction of his right to resort to the capital of the residuary estate in the event of the income thereof being insufficient in any future year or years to pay his said annuity in full]

AND WHEREAS the Trustees have agreed to join in these presents in manner hereinafter appearing.

NOW THIS DEED WITNESSETH in pursuance of the said agreement as follows:—

Release of right to resort to capital. 1. The said A in consideration of the sum of £—— now paid to him by the Trustees by the direction of the said A and B out of capital moneys forming part of the residuary estate of the Testator (the receipt whereof the said A doth hereby acknowledge) doth hereby release and surrender all the right title and interest of him the said A in the capital of the residuary estate of the Testator in the event of the income thereof in any future year or years being insufficient to pay his said annuity of £—— in full to the intent that the said residuary estate remaining in the hands of the Trustees shall be held by the Trustees free from any liability to make good any insufficiency in the income thereof and so that the said annuity shall be charged only upon the income of such residuary estate accruing from year to year and so that any insufficiency in the income of such residuary estate in any year or years shall not be liable to be made good out of the income of the residuary estate in any future year or years.

Release of trustees. 2. The said A and B do and each of them doth hereby ratify and confirm the payment by the Trustees to the said A of the said sum of £—— so raised out of the said residuary estate as aforesaid and the said A and B and each of them doth hereby release and discharge the Trustees and each of them their and each of their executors and administrators estates and effects from all actions suits proceedings claims and demands for or in respect of the said payment of £—— or any part thereof or in any manner relating thereto

[*or* The said A in consideration of the payment of the sum of £—— now paid by the said B to the said A (the receipt whereof the said A doth

hereby acknowledge) doth hereby release and surrender all the right title and interest of him the said B in the capital of the residuary estate of the Testator in the event of the income thereof in any future year or years being insufficient to pay the said annuity of £—— in full to the intent that the said residuary estate remaining in the hands of the Trustees shall be held by the Trustees free from any liability to make good any insufficiency in the income thereof and so that the said annuity shall be charged only upon the income of such residuary estate accruing from year to year and so that any insufficiency in the income of such residuary estate in any year or years shall not be liable to be made good out of the income of the residuary estate in any future year or years.

elease of state.

3. The said B doth hereby declare that he has made the aforesaid payment of £—— for the benefit of the several persons entitled to the residuary estate of the Testator subject to the payment of the said annuity and doth hereby release his right (if any) to be repaid the said sum of £—— to the intent that the Trustees may hold the said residuary estate free from such charge upon the trusts declared by the said will of the Testator.]

In witness *etc.*

Form 12.

Purchase by Personal Representatives Pursuant to the Power Conferred by Section 48 of the Administration of Estates Act, 1925, of the Life Interest of the Surviving Spouse in the Residuary Estate of an Intestate (*a*).

arties.

This Deed is made the —— day of —— 19— between A of *etc.* of the first part and the said A and B of *etc.* (hereinafter called "the Administrators") of the other part

ecitals:

eath of ntestate;

Whereas C (hereinafter called "the Intestate") died on the —— day of —— 19— intestate and letters of administration to his [her]

(*a*) Stamp *ad valorem* on the redemption money. The Administration of Estates Act, 1925, s. 48 (1) provides: "Where a surviving husband or wife is entitled to a life interest in the residuary estate or any part thereof the personal representative may, either with the consent of any such tenant for life (not being also the sole personal representative) or, where the tenant for life is the sole personal representative, with the leave of the Court, purchase or redeem such life interest (while it is in possession) by paying the capital value thereof (reckoned according to tables selected by the personal representative) to the tenant for life or the persons deriving title under him or her and the costs of the transaction, and thereupon the residuary estate of the Intestate may be dealt with or distributed free from such life interest".

The personal representatives of a deceased husband or wife can exercise the power conferred by s. 48 (1) without the consent of the persons entitled, subject to the statutory life interest, to the intestate's residuary estate. The power is a useful one, more especially where the residuary estate remaining after payment of the statutory legacy of £1,000 is small. In such a case, it is often not worth the trouble involved to retain the residuary estate or the half in which the surviving spouse takes a life interest as the case may be. Resort to the power conferred by this section enables the whole estate to be wound up forthwith.

The administrators can take what tables they choose for calculating the value of the interest of the spouse. The tables in the Succession Duty Act, 1853, are now out of date. In selecting the tables to be employed the personal representatives will be safe in acting in the way a prudent purchaser would act. However, where a substantial residue remains, the personal representatives would be well advised to consult the statutory next-of-kin entitled, subject to the life interest of the spouse, as the family may not wish a substantial capital payment to be made to a surviving spouse.

estate were on the —— day of —— 19— granted out of the —— Probate Registry to the Administrators

AND WHEREAS the Intestate left him [her] surviving his wife [her husband] the said A but no issue or parent and accordingly his [her] residuary estate is now held on the statutory trusts for his [her] sister D and the children of his [her] deceased brother E and his [her] deceased sister G who are his [her] statutory next of kin under section 46 of the Administration of Estates Act 1925 state of family;

AND WHEREAS the Administrators have paid and satisfied the funeral and testamentary expenses and debts of the Intestate and have transferred to the said A all the personal chattels of the Intestate and have paid to him [her] the net sum of £1,000 free of death duties and costs with interest thereon from the date of the death until payment at the rate of 5 per cent. per annum as the said A doth hereby acknowledge payment of debts;

AND WHEREAS the net residuary estate of the Intestate remaining in the hands of the Administrators after making such payments as aforesaid is of the value of £—— which is now held by the Administrators upon trust for the said A during his [her] life net residue;

AND WHEREAS the capital value of the said life interest of the said A in the said residuary estate reckoned according to tables selected by the Administrators is £—— and the Administrators have determined with the consent of the said A to purchase and redeem such life interest for the said sum of £—— agreement to redeem life interest;

AND WHEREAS the Administrators have raised the said sum of £—— together with the sum of £—— for costs out of the residuary estate of the Intestate money raised.

NOW THIS DEED WITNESSETH in pursuance of the power conferred on the Administrators by section 48 of the Administration of Estates Act 1925 and of any and every other power enabling them in this behalf and in consideration of the sum of £—— now paid by the Administrators to the said A (the receipt whereof the said A doth hereby acknowledge) the said A as beneficial owner doth hereby assign unto the Administrators ALL THAT the life interest of the said A in the residuary estate of the Intestate TO HOLD the same unto the Administrators to the intent that such life interest may merge and be extinguished in the interests in remainder or reversion expectant thereon and that the Administrators may henceforth hold all the residuary estate of the Intestate wherein such life interest would but for the execution of these presents have subsisted upon the trusts and with and subject to the powers and provisions upon with and subject to which the same would be held if the said A had died at the date of these presents. Assignment of life interest.

[*Statement as to value if required.*]

IN WITNESS *etc.*

Form 13.

Mortgage to secure Building Finance where the Mortgagor holds a Building Agreement providing for the grant of a Lease after the erection and completion of a new building (*a*).

THIS MORTGAGE is made the —— day of —— 19— BETWEEN —— of *etc.* (hereinafter called "the Mortgagor" which expression shall where the context admits include the persons deriving title under him or entitled to redeem this security) of the [first] part [—— of *etc.* (hereinafter called "the Guarantor") of the second part] and —— of *etc.* (hereinafter called "the Mortgagee" which expression shall where the context admits include the persons deriving title under him or entitled to the benefit of this security) of the [third] part

WHEREAS :—

(1) By an Agreement (*b*) (hereinafter called "the Building Agreement") dated the —— day of —— 19— and made between —— (hereinafter called "the Freeholder") of the one part and the Mortgagor of the other part it was amongst other things agreed (a) that the Mortgagor would with all reasonable speed but subject as therein mentioned at his own cost erect cover in and complete fit for occupation and use upon the piece of land (hereinafter called "the Site") described in the Schedule hereto in a good substantial and workmanlike manner in accordance with plans sections drawings elevations and specifications (hereinafter in this deed collectively referred to as "the approved plans") approved by the Surveyor for the time being of the Freeholder and to the reasonable satisfaction in all respects of such Surveyor and in accordance with the by-laws or requirements of the local or other competent authority a new building consisting of (*c*) and that the Mortgagor would complete the said new building within —— calendar months from the date of the Building Agreement or within such extended period as should be agreed as therein provided and would expend in so doing at least £—— and (b) that when and so soon as the said new building should have been completed in carcase and roofed in in conformity with the approved plans and with the provisions of the Building Agreement or otherwise to the satisfaction of the Freeholder and the portions of the Site unbuilt on should have been laid out fenced and paved to the satisfaction of the Freeholder and a certificate to that effect signed by the said Surveyor shall have been produced to the Freeholder and provided the Mortgagor

(*a*) This form was drafted by Mr. L. E. Coleman. It must be adapted to suit the type of building in connection with the erection of which it is to be used. In loans of this nature it is advisable, if possible, for the mortgagee to obtain from the builder (by means of a separate deed) a covenant that he will complete the new building in any event provided he receives payment either from the mortgagor or the mortgagee. Such a deed protects the mortgagee because there is otherwise no privity between him and the builder, and accordingly if the mortgagor makes default both under the building contract and the mortgage and the builder stops work the mortgagee may have difficulty in getting the building finished and thus in putting himself in a position where he can realise his security to the best advantage.

(*b*) Adapt as necessary; there may be a building lease instead of a building agreement.

(*c*) Insert here a sufficient description of the proposed new building.

should at that time have observed and kept all the stipulations and conditions therein on his part contained (other than such (if any) as might have been waived) the Freeholder should forthwith on being requested so to do grant to the Mortgagor and the Mortgagor would accept and execute a Counterpart of a Lease of the Site together with the said new building erected thereon by the Mortgagor for a term of —— years from the —— day of —— 19— at a rent of (*d*) —— for the period ending the —— day of —— 19— and of —— per annum for every other year of the said term and it was provided that such Lease should be in the form [annexed] [scheduled] to the Building Agreement [with such variations as might be necessary and be agreed between the Freeholder and the Mortgagor in manner therein mentioned]

(2) The Mortgagee [at the request of the Guarantor] has in manner hereinafter appearing agreed to make advances to the Mortgagor from time to time under the covenant on the part of the Mortgagee hereinafter contained upon having the repayment thereof with interest thereon as hereinafter mentioned secured in manner hereinafter appearing [and it was a term of such agreement that interest in arrear should be capitalised in manner hereinafter appearing] (*e*).

NOW THIS DEED WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows :—

1. In pursuance of the said agreement in that behalf and in consideration of the premises the Mortgagee at the request [of the Guarantor and] of the Mortgagor hereby covenants with the Mortgagor that (subject as hereinafter provided) the Mortgagee will from time to time advance to the Mortgagor [and pay to —— of —— their —— as agents for and on behalf of the Mortgagor (whose receipt shall be a full and sufficient discharge therefor)] for the purpose of enabling him to complete the erection of the said new building required to be completed by him under the terms of the Building Agreement upon the land therein and herein described in sums of not less than £—— (*f*) each upon the certificates of the Surveyor or Architect for the time being of the Mortgagee as hereinafter mentioned sums equal to —— per centum of the amount certified by such certificates and amounting together to an aggregate sum of £——

PROVIDED ALWAYS that :—

(i) The formal receipt of the building contractor for the full amount of each such certificate as aforesaid shall be produced to the Mortgagee within —— days of the making of each advance under the provisions of this present clause

(ii) The Mortgagee shall not make or be requested to make any advances to the Mortgagor under the provisions of this present clause unless and until all [works of demolition pulling down and removal of existing buildings standing on the Site and all] excavations for basements foundations and footings and other necessary works preparatory to the erection of the said new building shall have been completed to

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(*d*) It is not uncommon to have a peppercorn rent only payable during the building period.

(*e*) Delete if capitalisation of interest in arrear is not agreed upon between the parties.

(*f*) A minimum is desirable to prevent the mortgagor making constant applications for small sums of money.

the reasonable satisfaction of the Surveyor or Architect of the Mortgagee and a certificate to that effect signed by such Surveyor or Architect shall have been delivered to the Mortgagee and the erection of the said new building shall have been commenced and such progress made thereon as is hereinafter mentioned

(iii) The Mortgagee shall not be bound to make any advances to the Mortgagor under the provisions of this present clause exceeding in the aggregate the sum of £—— and no advance shall be made unless and until the Surveyor or Architect of the Mortgagee shall have issued a certificate or the Mortgagee shall otherwise have satisfied himself that a total sum of £—— at least (*g*) has been expended on the erection of the said new building in accordance with the provisions of the Building Agreement exclusive of architects' and surveyors' fees and expenses and any costs and expenses of and incidental to any [demolitions] excavations or other preparatory works or of obtaining any consents or approvals of the approved plans and of any sum allocated for extraordinary works encountered in the way of provision against subsidence from watercourses or otherwise light or air claims party wall agreements compensation claims by tenants or adjoining owners or otherwise howsoever

(iv) The Mortgagee shall not be bound to make or continue any advance or further advance to the Mortgagor under the provisions of this present clause unless and until the Surveyor or Architect of the Mortgagee shall have certified in writing that in his opinion the value of the total work then already carried out upon the said new building and of the materials up to that time employed therein is (after deducting therefrom (a) the sum of £—— mentioned in the last preceding paragraph hereof (exclusive as therein mentioned) and (b) [one and a third times] the amount of the advance or advances (if any) then already made under this clause) equal to at least [one and a third times] the amount of the then intended advance (or the further advance as the case may be) and in the opinion of the Surveyor or Architect of the Mortgagee the sum remaining unadvanced of the said aggregate sum of £—— represents [three quarters of] the amount required completely to finish the said new building ready for use and occupation or the Mortgagee shall otherwise be satisfied in regard thereto and the said Surveyor or Architect shall grant or withhold such certificate as he in his absolute discretion thinks fit [but he shall not unreasonably withhold the granting of such certificate if the foregoing provisions have been complied with and no default by the

(*g*) This and the next following paragraph of this proviso must be adapted as necessary. If the arrangement is that after the expenditure by the mortgagor of a certain percentage of the cost of the new building (*e.g.*, 25 per cent.), the mortgagee will advance the balance (in the present example, 75 per cent.) against architects' certificates then the references to "one and one-third" and "three-quarters" in square brackets in paragraph (iv) must be deleted. If, however, the arrangement is that after expenditure by the mortgagor of a certain percentage of the cost of erection (*e.g.*, 10 per cent.) the mortgagee will advance a certain percentage (*e.g.*, 75 per cent.) of the balance (in the present example 90 per cent.) concurrently with the expenditure by the mortgagor of his percentage of such balance (in the present example 25 per cent. of 90 per cent.) then the words in square brackets (or equivalent words to meet the circumstances if the mortgagee's percentage is other than 75 per cent. of the balance) will be necessary.

Mortgagor under these presents is subsisting at the time such certificate is required]

(v) The Mortgagee shall not be bound to make or continue any advance or further advance to the Mortgagor under the provisions of this present clause unless up to the time when such advance ought to be made the Mortgagor shall have duly paid or the Mortgagee shall have received all interest which shall have become payable on the principal money (if any) then advanced to the Mortgagor under the terms of this present clause and the Mortgagor [and the Guarantor] shall have duly observed and performed all the covenants and obligations on [his] [their respective] part[s] herein contained and each and every of the agreements obligations conditions and stipulations contained in the Building Agreement and on the part of the Mortgagor to be observed and performed has been observed and performed to the reasonable satisfaction of the Mortgagee

(vi) The Mortgagee shall not be bound to make or continue any advance or further advance under the provisions of this present clause if at the time when such advance ought to be made any of the events upon the happening of which the statutory power of sale and of appointing a Receiver is under the provisions hereinafter contained made exercisable shall have happened

(vii) The Mortgagee shall not be bound to make or continue any advance or further advance under the provisions of this present clause unless and until the Mortgagee is satisfied that the payment in question together with all previous advances (if any) made under the provisions of this clause will together as one aggregate principal sum be charged on all the premises comprised in this security in priority to all rights interests or powers of any other person persons body or corporation whatsoever

(viii) The obligation of the Mortgagee to make or continue any advance or further advance under this present clause shall cease if the Mortgagor shall not in the opinion of the Mortgagee make reasonable and proper progress with the erection of the said new building (due regard being had to fire or other inevitable accident strikes or lock-outs in the building trade or other combinations of workmen therein or other strikes or lock-outs which prevent or delay the manufacture or supply of materials or the delivery thereof to the Site) or the Mortgagor without the written consent of the Mortgagee previously obtained assigns his estate or interest in the premises comprised in this security or any part thereof

(ix) The fees of the Surveyor or Architect of the Mortgagee [(in accordance with the usual scale)] [(in accordance with the scale prescribed by ——)] for approving the approved plans and in relation to each inspection of the said new building with a view to giving the certificates aforesaid [(and whether or not a certificate is issued after each such inspection)] shall be payable by the Mortgagor and may at the option of the Mortgagee be deducted from the amount of any advance to be made under the provisions of this present clause

(x) The benefit of the covenant on the part of the Mortgagee hereinbefore in this present clause contained is personal to the Mortgagor and shall not be capable of being assigned to any person without the previous consent in writing of the Mortgagee [and the Mortgagee

shall be at liberty to refuse such consent without giving any reason]

(xi) This security shall extend to all or any sums which may be advanced by the Mortgagee to the Mortgagor notwithstanding that the obligation on the part of the Mortgagee to make or continue the said advances shall for any reason have ceased or shall never have existed.

2. IN consideration of the advances to be made as provided by Clause 1 hereof the Mortgagor [and the Guarantor] hereby [jointly covenant and each of them severally] covenants with the Mortgagee to repay to the Mortgagee on demand every sum of money advanced to the Mortgagor pursuant to Clause 1 hereof with interest thereon from the date of each advance [(such interest to be paid and computed both before and after any demand and as well after as before any judgment or order to be recovered or made hereunder)] up to the date of actual payment of principal at the rate of £—— per centum per annum [(reducible to £—— per centum per annum as hereinafter mentioned)] [and also to pay on demand any sums of money which under the provision for capitalisation of interest in arrear hereinafter contained shall be capitalised and treated as an accretion to the principal money hereby secured] AND FURTHER that pending such demand as aforesaid to pay to the Mortgagee interest on such principal [and other sums] as aforesaid for the time being owing on the security of these presents or on any judgment or order which may be recovered or made hereunder at the rate of £—— per centum per annum [(reducible to £—— per centum per annum as hereinafter mentioned)] by equal [half-yearly] payments on the —— day of —— and the —— day of —— in every year.

[3. PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED :—

[(a) that if and so often as any interest due under the covenant hereinbefore contained in Clause 2 hereof shall be in arrear for —— days after the day on which the same ought to be paid such interest shall be treated as an accretion to the principal moneys hereby secured as from the day on which the same ought to have been paid and shall thenceforth bear interest at the [higher] rate aforesaid payable at the same time and in the same manner as the interest hereinbefore covenanted to be paid and this security shall extend to such capitalised interest which with the interest thereon is hereby charged on the premises hereby mortgaged and such property shall not be redeemed except on payment of all principal moneys and all interest hereby secured and all such capitalised interest as aforesaid

(b) that on any day hereinbefore appointed for payment of interest the Mortgagor [or the Guarantor] may pay to the Mortgagee in addition to the interest then due upon the principal moneys for the time being owing on this security so much of the said principal moneys as shall for the time being represent capitalised interest

(c) that notwithstanding such capitalisation as aforesaid the Mortgagee shall be entitled at his option at any time to treat any interest which has been in arrear as interest in arrear instead of treating it as having been capitalised and to enforce payment thereof as interest in arrear or to exercise the power of sale and other powers hereby conferred on him on the ground of interest being in arrear]

[(d) if continuously on each [half-yearly] day hereinbefore fixed

for payment of interest or within [fourteen] days next after such day there shall be paid to the Mortgagee interest on the principal moneys for the time being owing on this security at the rate of £—— per centum per annum for the [half-year] ending on such [half-yearly] day and so long as there shall not have been any breach of any obligation statutory or otherwise binding on the Mortgagor or of any of the covenants whether express or implied herein contained and on his part to be observed and performed then the Mortgagee will accept interest upon such principal moneys at the rate of £—— per centum per annum in lieu of the rate of £—— per centum per annum but this provision shall not take effect while the Mortgagee is in possession as a mortgagee in possession nor after any judgment or order shall have been obtained by the Mortgagee for payment of any moneys payable hereunder nor after any notice given by the Mortgagee requiring payment of the principal moneys for the time being owing on this security].]

[4. (*h*) THE MORTGAGOR [and the Guarantor] hereby further [jointly covenant and each of them severally] covenants with the Mortgagee to pay to the Mortgagee by way of bonus a sum equal to —— per centum of £—— and in respect of any amount which may be advanced by the Mortgagee under Clause 1 hereof in excess of the said sum of £—— to pay to the Mortgagee a similar bonus calculated at —— per centum on such additional sum advanced such bonuses to be paid on demand and to carry interest at the [higher] rate aforesaid and so that any such bonuses (with any interest thereon) may at the Mortgagee's option be satisfied wholly or in part by deduction and retention out of the advances (if any) made pursuant to the provisions of Clause 1 hereof.]

5. IN consideration of the advances to be made under the provisions of Clause 1 hereof the Mortgagor as beneficial owner hereby assigns unto the Mortgagee ALL THAT the full benefit of the Building Agreement AND ALL THAT the estate right and interest of the Mortgagor under the Building Agreement of and in the land described in the Schedule hereto and in the new building erected or about to be erected thereon AND ALL estate right and interest in any Lease which may be granted under the Building Agreement and the benefit of all payments made and work done by the Mortgagor under the Building Agreement AND ALL rights and powers conferred upon or exercisable by the Mortgagor by or under the Building Agreement TO HOLD the same unto the Mortgagee absolutely subject to the proviso for re-assignment hereinafter contained PROVIDED ALWAYS that upon payment by the Mortgagor to the Mortgagee of all principal and other moneys (if any) advanced or to become due under the provisions contained in Clause 1 hereof and the interest thereon (if any) at the [appropriate] rate aforesaid from the day whereon the same shall be advanced or become owing [and also the payment of all other moneys secured hereby] the premises hereinbefore respectively assigned shall at the request and cost of the Mortgagor be duly re-assigned to him AND any Lease which (under the power vested in him by Clause 14 hereof) the Mortgagee may have procured to be granted to him or his nominee shall upon

(*h*) Delete this clause if inapplicable.

request and at the like cost be duly assigned to the Mortgagor or as he shall direct.

6. THE Mortgagor [and the Guarantor] hereby further [jointly covenant and each of them severally] covenants with the Mortgagee that the Mortgagor will at all times during the continuance of this security or of the legal charge to be executed as hereinafter provided insure or cause to be insured the said new building and the fixtures plant machinery fittings and apparatus belonging thereto against loss or damage by fire in the joint names of the Mortgagee and the Mortgagor and in such other names as having regard to the provisions of the Building Agreement and of the Lease to be granted thereunder shall be requisite in such a sum as the Surveyor or Architect of the Mortgagee may advise and will increase such insurance (in accordance with the recommendations of such Surveyor or Architect) from time to time as the said new building approaches to completion so that the same and the said fixtures plant machinery fittings and apparatus may continuously be and remain insured in a sum equal to the full value thereof for the time being AND will when the said new building is completed keep or cause the same and all fixtures plant machinery fittings and apparatus for the time being subject to this security to be kept in good substantial and decorative repair and working order and condition and also insured against loss or damage by fire in such names as aforesaid in a sum equal to the full value thereof [and also in the sum of £—— in respect of one year's rack rental thereof] [and also if required by the Mortgagee against all such other risks whatsoever as may be insurable and as the Mortgagee may from time to time deem necessary] And [all] such before mentioned insurance[s] shall during the continuance of this security be in such office or offices as the Mortgagee shall from time to time direct And the Mortgagor will duly and punctually pay all premiums necessary for effecting and keeping up the said insurance[s] when the same [respectively] become due or within seven days thereafter and will on demand deliver to the Mortgagee the policy or policies of [every] such insurance and the receipt or receipts for [every] such premium AND that it shall be lawful for the Mortgagee and the surveyors and workmen and others employed by him at all reasonable times to enter upon the said new building or any part thereof to examine the state and condition thereof and of any decays defects and wants of reparation and amendment there found to give or leave notice in writing on or at the said property and the Mortgagor will forthwith after such notice well and sufficiently repair amend and make good the same accordingly.

7. IF default shall at any time be made in effecting or keeping up [any] such insurance as is mentioned in the last preceding clause hereof or in keeping the said premises or any part or parts thereof in such repair and working order and condition as aforesaid or in delivering [any] such policy or receipt as aforesaid it shall be lawful for (but not obligatory upon) the Mortgagee to insure and keep insured in manner aforesaid the said premises [and rental] or any part or parts thereof respectively or (as the case may require) to repair and keep in repair or good working order or condition (as the case may require) the same and [(subject to the rights of any under-tenant)] to enter upon the premises comprised herein or any part or parts thereof for that

purpose without thereby becoming liable as mortgagee in possession and to use deal with or dispose of any chattels or things belonging to the Mortgagor on in or about any such property and to expend pay or debit in account such moneys as he may deem necessary for such purpose or purposes and all moneys so expended paid or debited in account by him for any such purpose shall (with interest) be repaid and charged as in Clause 16 hereinafter mentioned [Provided however that so long as all the property comprised in this security is kept insured in accordance with the covenants in that behalf respectively contained in the Building Agreement and (when the same is granted) the Lease to be granted thereunder and the Mortgagor delivers to the Mortgagee the policy or policies of such insurance and from time to time the current receipt or receipts for the premiums payable in respect thereof the Mortgagee will (provided such policy or policies are in common form and contain a note of his interest therein) accept such policy or policies as satisfying *pro tanto* the obligations of the Mortgagor as to insurance contained in the last preceding Clause hereof.]

8. ALL moneys becoming payable by any insurance company in respect of any insurance or insurances (additional to those referred to in Clause 6 hereof in respect of which the provisions of section 108 of the Law of Property Act 1925 would apply) which have at the date hereof been or shall hereafter during the subsistence of this security be effected by or on behalf of the Mortgagor in respect of the property comprised in this security or any part thereof shall be deemed to be moneys received on insurances for the maintenance of which the Mortgagor is liable under the terms of this deed and shall be applied by the Mortgagor accordingly (*i*).

9. THE Mortgagor [and the Guarantor] hereby further [jointly covenant and each of them severally] covenants with the Mortgagee in manner following that is to say:—

(a) That the Mortgagor will erect and complete or cause to be erected and completed in every respect fit for occupation and use the said new building upon the land described in the Schedule hereto or on some part or parts thereof with all due diligence and in accordance with the approved plans and the provisions and conditions of the Building Agreement and shall expend in so doing a total sum (exclusive of architects' and surveyors' fees and expenses in connection with the erection of the said new building the costs and expenses of and incidental to any [demolitions] excavations or other preparatory works or of obtaining any consents or approvals of the approved plans and the cost of extraordinary works which may be encountered in the way of provision against subsidence from watercourses or otherwise light or air claims party wall agreements compensation claims by tenants or adjoining owners or otherwise howsoever) of not less than £——

(b) That the Mortgagor will duly observe and perform all the agreements obligations conditions and stipulations contained in and now subsisting under the Building Agreement and on his part to be observed and performed and will within seven days after demand

(*i*) This clause, coupled with the relevant part of Clause 14, is intended to meet the position resulting from the decision in *Halifax Building Society* v. *Keighley*, [1931] 2 K. B. 248. A covenant by the mortgagor to insure in a specified office "and no other office" is not wholly satisfactory to a mortgagee.

produce or cause to be produced to the Mortgagees the receipt for every payment of rent reserved thereby and such other satisfactory evidence as the Mortgagee may reasonably require of the performance of every such agreement obligation condition and stipulation therein

(c) That the Mortgagor shall not sever or permit to be severed from the said land or remove or permit to be removed from any property hereby mortgaged any fixtures plant machinery fittings or apparatus now or hereafter affixed thereto or placed thereon except for the purpose of renewing or replacing the same by others of equal or greater value and convenience (and not detracting in any way from the value of any such property) and to be subject to this security (which renewal or replacement is hereby authorised accordingly)

(d) That the Mortgagor will as and when he shall under the provisions of Clause 1 hereof become entitled to require the same to be made apply to the Mortgagee for and shall accept the advances provided to be made under the said clause

(e) That the Mortgagor will not without the previous consent in writing of the Mortgagee obtain from any person or source other than the Mortgagee the advance of any moneys for the purpose of the erection or completion of the said new building except upon terms that the whole of the said sum of £—— to be advanced under Clause 1 hereof and all other moneys secured hereby whether or not the same shall then in fact have been advanced or have become due hereunder prior to the date of any such other advance being made shall rank before such other advance

(f) That all moneys advanced by the Mortgagee to the Mortgagor under Clause 1 of these presents shall be applied for the purpose of the erection and completion of the said new building and for no other purpose and that the Mortgagor will not create or purport to create any charge on the said premises the subject of this mortgage or on any part thereof ranking in priority to or *pari passu* with any moneys advanced or to be advanced under and secured by these presents

[(g) That the Mortgagor will not without the previous consent in writing of the Mortgagee be registered or apply to be registered as proprietor under the Land Registration Acts 1925 and 1936 of any property hereby mortgaged] (*j*)

(h) That at all times during the continuance of this security the Mortgagor will keep the Mortgagee effectually indemnified from and against all liability which may be incurred by him under any of the covenants agreements or obligations on the part of the lessor at any time contained in or implied by any lease or tenancy agreement affecting any part of the said new building which may be granted or entered into by the Mortgagor and from and against all actions proceedings losses damages and costs whatsoever in consequence of any claim by any tenant or occupier of any part of the said new building or any other person arising out of any defect in or want of repair to the said new building or any part thereof or out of any failure to perform or observe any such covenant or obligation and that in the event of the Mortgagor failing upon the request in writing of the Mortgagee to keep him so indemnified from and against any such

(*j*) Delete in case of registered land.

liability as aforesaid it shall be lawful for the Mortgagee (in his discretion) to perform or observe any such obligation or to settle liquidate or compound or to contest any claim (as he may think fit) and to expend such moneys as he may deem necessary for that purpose and any moneys so expended shall (with interest) be repaid and charged as in Clause 16 hereinafter mentioned (*k*)

(i) That the Mortgagor will within twenty-four hours of receiving notice from the freeholder or any person acting on his behalf of any alleged breach of the provisions of the Building Agreement inform the Mortgagee thereof in writing and of the nature of the alleged breach.

10. (1) This security shall become enforceable forthwith and the statutory power of sale and of appointing a receiver conferred by the Law of Property Act 1925 shall become immediately exercisable by the Mortgagee without the necessity of giving any notice in that behalf in any of the following cases *videlicet* :—

(a) If default shall be made in the repayment of any principal and other moneys hereby secured for [fourteen] days after the date on which the Mortgagee shall require repayment of the principal and other moneys hereby secured

(b) If default shall be made in the payment of any interest payable under these presents for [fourteen] days after the date whereon the same shall become due

(c) On any breach on the part of the Mortgagor [and/or the Guarantor] of any covenant or obligation herein contained or implied

(d) If [either] the Mortgagor [or the Guarantor] shall become bankrupt or have a receiving order made against him or enter into any arrangement or composition with or for the benefit of his creditors

(e) If there shall be any breach of any of the agreements obligations conditions and stipulations contained or implied in the Building Agreement and on the part of the Mortgagor to be observed and performed

(f) If a receiver of any property belonging to the Mortgagor [and/or the Guarantor] or of the rents and profits thereof shall be appointed by a Court of competent jurisdiction or any distress or execution shall be levied upon any such property and not paid out within ten days

(g) If the Borrower [or the Guarantor] shall die or [either of them] shall execute a bill of sale over any of his personal chattels

(2) The said power of sale shall be extended so as to authorise the Mortgagee to cancel the Building Agreement and surrender the premises comprised therein or any part thereof to the Freeholder on such terms as the Mortgagee shall in his absolute discretion think fit.

11. ANY receiver who may be appointed by the Mortgagee under his statutory powers (as herein modified) in respect of the property hereby mortgaged or any part thereof shall have full powers in the name or otherwise on behalf and at the cost of the Mortgagor (but not without the consent of the Mortgagee) to manage sell let deal with or dispose of such property in any manner whatsoever and with all the powers in that behalf of an absolute beneficial owner and to execute

(*k*) Adapt this sub-clause as necessary.

carry out and do all such instruments matters acts and things as may be considered proper or advisable for any such purpose And the Mortgagor hereby irrevocably appoints each such receiver to be his attorney for all or any of the purposes mentioned in this clause and hereby ratifies and confirms and agrees to ratify and confirm whatsoever the said attorney shall do or purport to do by virtue of the powers hereunder mentioned And so that the powers of each such receiver shall include in particular full powers :—

(*l*) (a) To provide all or any of the lessees tenants or occupiers of any property hereby mortgaged with lavatories heat light lifts stairs corridors and other conveniences and with the services of housekeepers caretakers hall porters and other servants

(b) To do or make any alterations improvements additions or repairs (decorative or otherwise) to or in respect of any such property and to paint paper or otherwise decorate the same

(c) To let or agree to let all or any part or parts of the said property for such periods upon such terms and conditions and with such provisions as the person or persons for the time being exercising this power may in his or their absolute discretion think fit (provided that the rents obtained are reasonable ones having regard to the terms of the tenancies) including if so thought fit provisions requiring the landlords to do all or any of the following things namely : to pay all or any rates taxes and other outgoings to do all or any decorative or other repairs painting papering or alterations and to provide all or any facilities conveniences or services or imposing any other liabilities on the landlords or allowing rent to be suspended during rebuilding after fire

(d) To accept surrenders of leases or tenancies and to effect alterations of the terms thereof and to give any consents required thereunder and to make allowances to and other arrangements with the lessees tenants or occupiers upon any terms and in any manner whatsoever

(e) To perform observe execute carry out do and complete any works covenants obligations instruments matters acts or things and make any payments (including payments for costs fees commission and expenses) undertaken by the Mortgagor by the Building Agreement or by the Lease to be granted thereunder or by any other lease or agreement or by this deed

[(f) To carry on or concur in carrying on on or in the said new building or any part or parts thereof any trade or business which at the date of any exercise of this power is being carried on on the said new building or any part or parts thereof or any other trade or business whatsoever which is not precluded by the covenants of the Lease to be granted under the Building Agreement or by any of the landlord's covenants in any sub-lease or sub-leases or tenancy agreement or agreements of any part or parts of the said new building granted or entered into by the Mortgagor and to insure any persons employed in such business and all or any other accountable persons against all liabilities for or in respect of persons or property on or in any property hereby mortgaged]

(*l*) Adapt this and immediately following sub-clauses as necessary.

(g) To enter upon take possession of collect and get in any property hereby mortgaged (and if necessary for that purpose to take any proceedings in the name of the Mortgagor or otherwise as may seem expedient) and to use deal with or dispose of any chattels or things belonging to the Mortgagor on in or about any such property

(h) To employ and pay or concur in employing and paying (i) all such servants and others as may be necessary or proper having regard to the terms of the leases or tenancies of the said new building for the time being subsisting or to the necessity of keeping the said property in proper order and condition and (ii) any managers officers agents servants or employees for any other of the purposes hereof at such salaries or wages and otherwise upon such terms as may be thought proper and to insure against all liabilities incurred by the employers of all or any such persons

(j) To make any arrangement or compromise which may be thought expedient

(k) To raise or borrow or accept advances of money from the Mortgagee or any other person for or in connection with any of the purposes or matters mentioned in this clause.

(l) To do all such other acts and things as may be considered to be conducive to any of the matters or powers aforesaid and which the Receiver can lawfully do as the agent of the Mortgagor.

12. IF and when the said power of sale shall become exercisable it shall be lawful for but not obligatory on the Mortgagee (subject to any necessary consent or approval of the Freeholder) (*m*) to enter upon and take possession of the premises comprised in the Building Agreement and of all buildings erections and fixtures whatsoever thereupon or therein and (either himself or by or through any attorney substitute or substitutes agent or agents in Clause 14 hereof mentioned) to perform observe prepare execute carry out do or complete any works covenants obligations instruments matters acts or things or make any payments (including payments for costs and expenses undertaken by the Mortgagor by the Building Agreement or by this Deed) and continue and complete the said new building thereon in such manner as he may think fit and for that purpose may use any plant or materials upon the said premises or purchase or hire other plant or materials or equipment and pay such moneys and incur such expenses as he may in his discretion think fit and any moneys so paid or expended shall (with interest) be repaid and charged as in Clause 16 hereinafter mentioned.

13. THE Mortgagor [and the Guarantor] hereby further [jointly covenant and each of them severally] covenants with the Mortgagee that the Mortgagor will procure a Lease of the premises comprised in the Building Agreement together with the said new building erected thereon for the term and at the rent and in the form provided by the Building Agreement (with such necessary variations (if any) as aforesaid) to be granted to the Mortgagor so soon as such Lease can be required in accordance with the provisions of the Building Agreement

(*m*) If the freeholder is approached prior to completion of the mortgage he may be willing to undertake in writing with the mortgagee to allow the latter, if the mortgagor defaults, to complete the new building conformably with the provisions of the building agreement and to take up the lease. Such an approach should therefore be made.

(but so nevertheless that no application shall be made to the Freeholder for a Lease or Leases of any part or parts of the land comprised in the Building Agreement unless and until the Mortgagor is entitled thereunder to a Lease of the whole of the land comprised therein and further that when the Mortgagor is entitled under the Building Agreement to a Lease of the whole of the land comprised therein he shall not apply to the Freeholder for separate Leases of separate portions of the said land without the consent in writing of the Mortgagee previously obtained and the Mortgagee shall be entitled to withhold such consent unless he is satisfied in regard to the apportionment of the total rent as between the various Leases which the Mortgagor wishes to apply for) and that the Mortgagor [and the Guarantor] shall forthwith upon the grant of the said Lease at the expense of the Mortgagor execute and deliver to the Mortgagee a valid first legal charge of the premises comprised therein for the purpose of further securing the moneys which shall then or thereafter be or become owing to the Mortgagee upon this security with interest thereon at the rate[s] aforesaid such mortgage to consist of a deed of legal charge of the said premises in such form as the Mortgagee shall reasonably require And that the Mortgagor will also bear and pay all costs charges fees and expenses of or incidental to every other instrument deed act or thing which the Mortgagee may deem necessary or proper for creating or perfecting (whether by registration or otherwise) his security upon the premises demised by such Lease And that until such legal charge shall be executed the estate and interest of the Mortgagor in such Lease and the premises comprised therein shall stand charged with the payment to the Mortgagee of all moneys which shall then or thereafter be or become owing to the Mortgagee upon this security.

14. THE Mortgagor hereby irrevocably appoints the Mortgagee to be the attorney of him the Mortgagor :—

(a) for him and in his name and on his behalf and as his act and deed and otherwise to demand sue for recover receive and give effectual receipts and discharges for all or any moneys payable to the Mortgagor under all or any insurance or insurances of the nature referred to in Clause 8 hereof

(b) for all or any of the purposes of Clause 12 hereof

(c) for him and in his name or in the name of the estate owner for the time being and on his behalf and as his act and deed and otherwise to apply for and procure the granting of the Lease referred to in the last preceding Clause hereof to the Mortgagor as aforesaid and to execute sign and deliver and otherwise perfect the Counterpart of such Lease and the said Legal Charge or either of them and

(d) generally to act in the premises as to the Mortgagee shall seem proper and to appoint from time to time and remove at pleasure any substitute or substitutes agent or agents to act under him in respect of all or any of the matters aforesaid

AND the Mortgagor hereby ratifies and confirms and agrees to ratify and confirm whatsoever the said attorney or any substitute or agent acting under him shall do or purport to do by virtue of the powers aforesaid And all moneys expended by the Mortgagee or any substitute or agent as aforesaid for any of the purposes aforesaid shall

(with interest) be repaid and charged as in Clause 16 hereinafter mentioned.

15. THE Mortgagor hereby attorns tenant to the Mortgagee of so much of the property hereby mortgaged as is or shall on the completion of the said new building be in the occupation of the Mortgagor at the yearly rent of a peppercorn (if demanded) but the Mortgagee may at any time determine the tenancy hereby created either by notice in writing given to the Mortgagor or (without any notice) by entering upon and taking possession of the said property or any part thereof And the creation of the said tenancy shall not constitute the Mortgagee a mortgagee in possession or render him liable as such.

16. ALL sums at any time to be expended paid or debited in account (including any advances to be made) by the Mortgagee whether personally or by or through any such receiver as aforesaid or as the said attorney or any substitute or substitutes or agent or agents therefor as hereinbefore mentioned for any purpose or purposes referred to in this deed or for costs and expenses incurred by the Mortgagee at any time in relation to this security or any prior incumbrance dealing or disposition or for or in connection with the preparation execution perfection or protection (by notices registration or otherwise) of this deed or security or any deed instrument or security hereafter to be executed or given by the Mortgagor or for the fees of the Surveyor or Architect of the Mortgagee payable in connection with the supervision of the erection of the said new building and the granting or withholding of the certificates mentioned in Clause 1 hereof shall be deemed to be properly expended paid or incurred by him or them and shall be repaid to the Mortgagee by the Mortgagor on demand with interest thereon at the [higher] rate aforesaid from the time of payment expenditure or debiting as aforesaid and until so repaid shall be added to the principal moneys hereby secured and shall (with the interest thereon) be charged on all the property for the time being subject to this security and shall bear interest at the [higher] rate aforesaid from the time aforesaid payable with and on the same days as the interest on such principal moneys [and subject to the like provision for capitalisation with [half-yearly] rests as is in Clause 3 hereinbefore contained] PROVIDED that the charge hereby conferred shall be in addition and without prejudice to any and every other remedy lien or security which the Mortgagee may or but for the charge contained in this Clause would have for the moneys referred to in this Clause or any part thereof.

17. A demand for payment of any moneys secured by this deed or any other notice requiring to be served upon the Mortgagor [or the Guarantor] hereunder shall be deemed to have been duly served if made in writing under the hand of any duly authorised agent for the time being of the Mortgagee and sent through the post in a prepaid letter addressed to the Mortgagor [and/or the Guarantor (as the case may require)] at [his] [their respective] last known address[es] and any notice requiring an advance to be made or other notice requiring to be served upon the Mortgagee hereunder shall be deemed to have been duly served if made in writing and sent through the post in a prepaid letter addressed to the Mortgagee at his last known address and any such demand or notice as aforesaid (if sent by post) shall be deemed

to have been delivered within twenty-four hours after the said letter is posted and the provisions of section 196 of the Law of Property Act 1925 (except to the extent that they are varied by this Clause) shall apply to this deed.

18. THE Mortgagor shall not without the previous consent in writing of the Mortgagee exercise any of the powers of leasing or of agreeing to lease vested in or conferred on mortgagors by Common Law or by the Law of Property Act 1925 or any statutory re-enactment or modification thereof for the time being in force or suffer to be created a tenancy of any description of the premises comprised herein or accept or agree to accept a surrender of a lease or underlease.

19. Section 93 of the Law of Property Act 1925 shall not apply to this security.

20. THE Mortgagor shall be entitled to redeem this security at any time on giving to the Mortgagee —— calendar months' previous notice in writing of his intention so to do or by paying —— calendar months' interest at the [reduced] rate aforesaid in lieu of notice (*n*).

[21. As between the Mortgagor and his property on the one hand and the Guarantor on the other hand the Mortgagor and his property shall be primarily liable hereunder in exoneration of the Guarantor but this provision shall not affect the Mortgagee or his right to resort to and enforce all or any rights or remedies available under this Deed or otherwise at such time and in such manner as he shall think fit And although as between the Mortgagor on the one hand and the Guarantor on the other hand the Guarantor is only a Guarantor for the Mortgagor yet as between the Guarantor and the Mortgagee the Guarantor shall be liable as a principal debtor for all moneys and obligations hereby secured and shall not be released by any time or indulgence being given to or any arrangement or alteration of terms being made with the Mortgagor or by any release or dealing whatsoever by the Mortgagee or by any act omission or thing whatsoever whereby the Guarantor as Guarantor only would or might have been released but for this provision.]

IN WITNESS *etc.*

THE SCHEDULE ABOVE REFERRED TO

[*Insert particulars of the Site from Building Agreement.*]

(*n*) In mortgages of this nature it is desirable to state the terms on which repayment will be accepted.

Form 14.

Guarantee for Repayment of and Interest on Redeemable Preference Shares (*a*).

TO ALL to whom these Presents may come A of *etc.* and B of *etc.* (hereinafter called "The Guarantors") send greeting.

WHEREAS:—

The X Company hereinafter called "the Company" has issued 5,000 Cumulative Redeemable Preference shares of £1 each numbered —— to —— inclusive and it was part of bargain upon the issue of the said shares that the capital and interest thereon should be guaranteed by the Guarantors as hereinafter appears.

NOW THIS DEED WITNESSETH as follows namely:—

1. The Guarantors hereby jointly and severally guarantee that a dividend at the rate of 4 per cent. per annum shall be paid by the Company to the shareholders in respect of the said shares for each year commencing from the incorporation of the Company up to and including the year ending on the —— day of —— or until such time as the said shares shall be redeemed by the Company or until the Company shall be wound up whichever is the shorter period and if the Company has not earned and paid such dividend in any year the Guarantors hereby guarantee to pay to each of the said shareholders any sum or additional sum necessary to make up the said dividend to the rate aforesaid.

2. If the Company shall have made default in redeeming the said shares or any part of them by the —— day of —— or if the Company shall be wound up on or before that date without the said shareholders having been paid either by redemption or in the winding-up the whole of the capital of the said shares and any arrears of dividend the Guarantors shall pay the amount unredeemed or unpaid upon the said shares to the registered holder or holders thereof for the time being.

3. Any demand for money hereby guaranteed shall be made in writing by the said shareholder or shareholders to the Guarantors within two weeks after the time at which the Company has failed to pay any of the moneys hereby guaranteed and if required by the Guarantors so to do every registered shareholder for the time being of the said shares shall produce for the inspection of the Guarantors previously to any payment to him under this guarantee whether on account of capital or dividend the certificate or certificates of the share or shares on which default shall have been made by the Company.

4. Upon payment by the Guarantors of all sums hereby guaranteed the Guarantors shall be at liberty to have recourse to and enforce all rights possessed by them as sureties including a right to receive any dividends in arrear upon the said shares or to take a transfer of the said shares or claim in the winding up of the Company or otherwise as may be available to the Guarantors to recoup them for the moneys paid under this guarantee.

5. This guarantee shall bind the personal representatives of the Guarantors and the benefit thereof shall pass to each registered holder

(*a*) This form was drafted by Mr. R. R. Formoy, of Lincoln's Inn. Stamp 10s. if under seal, otherwise 6d.

for the time being of the said shares or the personal representatives of a deceased shareholder if entitled to the shares as part of the estate of such deceased shareholder.

6. The liability of the Guarantors as sureties hereunder shall not be impaired or discharged by reason of the said shareholders or any of them exercising any of their rights as shareholders conferred upon them by the Articles of the Company provided that this guarantee shall cease if the said Redeemable Preference shares shall with the consent of the registered holders or otherwise be converted into shares of a class other than Redeemable Preference shares and the obligation of the Guarantors under this guarantee shall not be increased or added to by any agreement or arrangement which may be made between the shareholders and the Company in reference to the said Redeemable Preference shares. Save as aforesaid this guarantee shall be a continuing guarantee.

IN WITNESS *etc.*

Form 15 (i—ix).*

Forms relating to Patents.

I

Assignment of Letters Patent (*a*).

(Simple Form.)

THIS ASSIGNMENT is made the —— day of —— 19— BETWEEN —— of —— (hereinafter called "the Assignor") of the one part and —— of —— (hereinafter called "the Assignee") of the other part. Parties.

WHEREAS :—

A. The Assignor is the registered proprietor of the [several] Letters Patent short particulars of which are set out in the Schedule hereto. Recital of title to patent.

B. The Assignor has agreed to assign the said Letters Patent to the Assignee for the consideration hereinafter set forth. Recital of agreement for sale.

NOW THIS ASSIGNMENT WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Assignee to the Assignor (the receipt whereof the Assignor doth hereby acknowledge) the Assignor as beneficial owner doth hereby assign unto the Assignee ALL THAT [THOSE] the said Letters Patent set out in the said Schedule together with the benefit of the invention[s] therein set forth TO HOLD the same unto the Assignee absolutely. Assignment.

2. [AND it is hereby certified that the transaction hereby effected does not form part of a larger transaction or series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £500 (*b*)] Certificate of value.

IN WITNESS whereof the Assignor has hereunto set his hand and seal the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

No. of Patent.	Date.	Title.	Registered Proprietor.

Signed sealed and delivered by the within named [Assignor] in the presence of :—

*Form 15, parts i to ix, were drafted by Mr. H. K. Turner.

(*a*) An assignment of granted Letters Patent must be by deed: *Stewart* v. *Casey*, 9 R. P. C. 9; stamp *ad valorem* as a conveyance on sale. The deed must be registered at the Patent Office after execution (s. 71, Patents and Designs Acts, 1907—1946). This is done by filing at the Patent Office Patents Form 32, stamped £1 for the first patent and 2s. 6d. for each subsequent patent together with the assignment and a certified copy thereof. The certified copy is stamped 1s. and is retained by the Patent Office and the original deed is returned marked as duly recorded. The assignee is entered in the Register of Patents as the registered proprietor of the patent or patents assigned.

(*b*) Certificate of value to be inserted where appropriate: see Finance (1909–10) Act, 1910, s. 73.

II

Assignment of Letters Patent including Foreign Patents and Patent Applications (*c*).

Parties.

THIS DEED is made the —— day of —— 19— BETWEEN —— of —— (hereinafter called "the Assignor") of the one part and —— of —— (hereinafter called "the Assignee") of the other part.

WHEREAS :—

Recital of British patent.

A. The Assignor has made an invention relating to —— and has applied for and has been granted certain Letters Patent therefor in the United Kingdom of Great Britain and Northern Ireland and the Isle of Man short particulars of which are set out in Part I of the Schedule hereto.

Recital of Dominion and foreign patents and patent applications.

B. The Assignor has applied for Letters Patent or corresponding protection in India and in certain of the British Dominions Colonies Protectorates Protected or Mandated Territories and in certain foreign countries in respect of the said invention particulars of such Letters Patent or equivalent protection which have been granted being set out in Part II of the said Schedule hereto and of those which have not yet been granted being set out in Part III of the said Schedule.

Recital of agreement for sale.

C. The Assignor has agreed to assign to the Assignee the said Letters Patent and equivalent protections and the said applications together with the benefit of the invention in the respective countries in the Schedule set forth for the consideration hereinafter appearing.

NOW THIS DEED WITNESSETH and it is hereby agreed as follows :—

Assignment.

1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the Assignee to the Assignor (the receipt whereof the Assignor doth hereby acknowledge) the Assignor as beneficial owner doth hereby assign unto the Assignee FIRSTLY ALL THAT the said British Letters Patent set out in Part I of the Schedule hereto together with the benefit of the invention therein set forth SECONDLY ALL THOSE the said Letters Patent and equivalent protection set out in Part II of the Schedule hereto together with the benefit of the inventions therein set forth TO HOLD the same unto the Assignee absolutely.

Assignor to prosecute applications and vest patents in assignor.

2. The Assignor shall with all reasonable speed and at his own expense prosecute the applications set forth in Part III of the Schedule hereto so as to obtain the grant of Letters Patent or equivalent protection thereon. As and when such Letters Patent or equivalent protection are granted the Assignor shall forthwith at his own expense execute and do all such documents acts and things as may be necessary effectually to vest the said Letters Patent or equivalent protection in the Assignee absolutely.

Assignee to vest foreign patents in assignor.

3. The Assignee shall forthwith at his own expense execute and do any documents acts and things which may be necessary effectually to vest in the Assignee the Letters Patent and equivalent protection set forth in Part II of the Schedule hereto (*d*).

(*c*) Stamp *ad valorem*—and see note (*a*) to Precedent No. I.

(*d*) This assignment will enable the assignee to be registered as the proprietor of the corresponding patent in any of the British Dominions or Colonies and in India, but assignments according to the law of the country are required in foreign countries. For purposes of expedition further separate assignments in the Dominions, Colonies and India may be desirable as the original deed will have to be sent to each country in turn.

Assignor to assign improvements.

4. In the event of the Assignor [within —— years from the date of these presents] inventing any improvement in or addition to the invention protected by the said Letters Patent the Assignor shall forthwith disclose the same to the Assignee and shall if requested by the Assignee at the cost of the Assignee apply for Letters Patent therefor in the United Kingdom and for Letters Patent or equivalent protection in India or in any of the British Dominions Colonies Protectorates Protected or Mandated Territories or in any foreign country at the like request and cost. The Assignor shall execute a free assignment of any such Letters Patent and equivalent protection to the Assignee when granted and the Assignee shall pay to the Assignor the costs of and incidental to such assignment (*e*).

Assignor appoints assignee attorney.

5. For the purpose of clauses 2, 3 and 4 of these presents the Assignor hereby [irrevocably (*f*)] appoints the Assignee as his Attorney for him and in his name [with full powers of substitution and revocation] to prosecute any of the applications set forth in Part II of the Schedule hereto and to execute or do any document act or thing necessary for vesting any Letters Patent or equivalent protection the subject of this agreement in the Assignee absolutely.

Interpretation.

6. In these presents the expressions "the Assignor" and "the Assignee" include their respective legal representatives successors or assigns.

Certificate of value.

7. Certificate of value [*clause 2 of Precedent I*] where applicable (*g*).

IN WITNESS whereof the Assignor and the Assignee have hereunto set their hands and seals the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

PART I

No. of Patent.	Date.	Title.	Registered Proprietor.

PART II

Country.	No. of Patent or other Protection.	Date.	Title.	Registered Proprietor.

(*e*) See sections 126 and 127, Law of Property Act, 1925.

(*f*) As to the effect of this clause see *Linotype and Machinery, Ltd.* v. *Hopkins* (1910), 27 R. P. C. p. 109.

(*g*) See note (*b*) to Precedent No. I.

PART III

Country.	No. of Application.	Date.	Title.	Applicant.

Signed sealed and delivered by the within named [Assignor] in the presence of :—

Signed sealed and delivered by the within named [Assignee] in the presence of :—

III

Agreement to Assign Invention and Application for Letters Patent (*h*).

Simple Form.

Parties. AN AGREEMENT made the —— day of —— 19— BETWEEN —— of —— (hereinafter called "the Inventor") of the one part and —— of —— (hereinafter called "the Assignee") of the other part.

WHEREAS :—

Recital of application for patent. A. The Inventor has invented certain "Improvements in [*title of invention*]" and has made application for Letters Patent therefor on the —— day of —— the said application being numbered ——.

Recital of agreement for sale. B. The Inventor has agreed to assign to the Assignee the benefit of the said invention and application for the consideration hereinafter appearing.

NOW IT IS HEREBY AGREED by and between the parties hereto as follows :—

Agreement to assign. 1. Pursuant to the said agreement and in consideration of the sum of £—— now paid by the Assignee to the Inventor (the receipt of which the Inventor doth hereby acknowledge) the Inventor doth hereby agree to assign as beneficial owner to the Assignee ALL THAT the said invention and application together with the full benefit thereof and together with any application or applications which may be divided from the said application and together with any Letters Patent which may be granted in respect of the said application or applications to the intent that

(*h*) Stamp *ad valorem*. In the case of a nominal consideration the Patent Office will call for adjudication when the agreement is registered. In these circumstances it is better to draw the document under seal.

any such Letters Patent shall issue in the name of the Assignee in accordance with the provisions of section 12 (1) (b) of the Patents and Designs Acts 1907—1946 TO HOLD the same unto the Assignee absolutely (*i*).

Inventor to prosecute application.

2. The Inventor shall with due diligence at the cost of the Assignee do all acts and things necessary for obtaining a grant of Letters Patent in respect of the said application and any application or applications which may be divided therefrom.

Interpretation.

3. In this agreement the expressions "the Inventor" and "the Assignee" shall include their respective legal personal representatives.

Certificate of value.

4. Certificate of value where applicable [*see clause 2 of Precedent No. 1*] (*j*).

As WITNESS the hands of the parties the day and year first above written.

Signed by the said [Inventor] in the presence of :—

Signed by the said [Assignee] in the presence of :—

IV

Assignment of Invention and British Patent Application together with Foreign Rights by Employee to Limited Company (*k*).

Parties.

THIS DEED is made the —— day of —— 19— BETWEEN —— of —— (hereinafter called "the Inventor") of the one part and —— limited whose registered office is situate at —— (hereinafter called "the Company") of the other part.

WHEREAS :—

Recital of application in joint names.

A. The Inventor has made an invention for certain "Improvements in [*title of invention*]" and has jointly with the Company made application for Letters Patent therefor the said application having been filed at the Patent Office on the —— day of —— and numbered ——.

Recital that company entitled to invention.

B. The Inventor is in the employment of the Company and it is a term of such employment that any invention made by the Inventor

(*i*) S. 12 (1) (b) of the Patents and Designs Acts, 1907—1946, is a proviso to the effect that "where an applicant has agreed in writing to assign the patent when granted or, in the case of a joint application, his interest in the patent when granted, the patent may, upon proof of the agreement to the satisfaction of the Comptroller, be granted to the assignee or, in the case of an assignment by a joint applicant of his interest to an assignee not being the other joint applicant, to the assignee jointly with the other applicant or his assignee". The procedure is to file the agreement duly stamped at the Patent Office accompanied by a certified copy thereof stamped 1s. with Patents Form 1E stamped £1. The certified copy is retained and the original returned and the patent is granted to the assignee. S. 12 (1) (b) does not cover the case of an agreement in writing by a single applicant to assign only a part interest in the patent when granted (*Lanfranconi's Application*, 53 R. P. C. p. 317). An agreement in which the sole applicant agrees to assign to himself and the third party jointly is however within the section.

(*j*) See note (*b*) to Precedent No. 1.

(*k*) Stamp 10s. This form will usually be employed where there is a service agreement in existence between the inventor and the company.

during the period of the said employment and relating to the business of the Company shall be the property of the Company.

Recital of agreement to assign.

C. The Inventor has agreed with the Company to assign to the Company his interest in the said invention and application.

NOW THIS DEED WITNESSETH and it is hereby agreed as follows :—

Agreement to assign.

1. Pursuant to the said agreement the Inventor doth hereby agree to assign as trustee unto the Company ALL THAT his interest in the said invention and application together with the full benefit thereof and together with his interest in any application or applications which may be divided from the said application and together with any Letters Patent which may be granted in respect of the said application or applications to the intent that any such Letters Patent shall issue in the name of the Company in accordance with the provisions of section 12 (1) (b) of the Patents and Designs Acts 1907—1946 TO HOLD the same unto the Company absolutely (*l*).

Inventor to do all things necessary for grant of patent.

2. The Inventor hereby covenants that he will at the request and cost of the Company execute and do all such documents acts and things as may be necessary to obtain the grant of Letters Patent in respect of the said application or any application or applications which may be divided therefrom and to vest the said Letters Patent in the Company absolutely.

Inventor to apply for foreign patents and vest same in company.

3. The Inventor hereby further covenants that he will at the request and cost of the Company execute and do all such documents acts and things as may be necessary to apply for Letters Patent or equivalent protection in respect of the said invention in India or in any of the British Dominions Colonies Protectorates Protected or Mandated Territories or in any foreign country as may be required by the Company and to vest any such application or Letters Patent in the Company absolutely.

Covenant by inventor to assign improvements.

4. In the event of the Inventor within [three] years from the date of these presents whether he is at that time in the employment of the Company or not inventing any improvement in or addition to the invention protected by the said application or any Letters Patent to be granted thereon the Inventor shall forthwith disclose the same to the Company and shall if requested by the Company and at the cost of the Company apply for Letters Patent therefor in the United Kingdom in the joint names of himself and the Company and shall at the like request and cost and in such joint names apply for Letters Patent or equivalent protection therefor in India or in any of the British Dominions Colonies Protectorates Protected or Mandated Territories or in any foreign country which the Company may require and shall at the cost of the Company execute a free assignment to the Company of his interest in any such application or Letters Patent to the Company so as to vest the same in the Company absolutely.

Inventor appoints managing director of company his attorney.

5. For the purposes of clauses 2, 3 and 4 of these presents the Assignor hereby appoints the managing director of the Company as his Attorney in his name to execute and do any document act or thing

(*l*) See note (*i*) to Precedent No. IV.

required by him to be executed or done. The power hereby created shall be irrevocable for one year from the date of these presents.

6. In this deed the expression "the Inventor" includes his legal personal representatives and the expression "the Company" includes its successors and assigns. Interpretation.

IN WITNESS whereof the Inventor has hereunto set his hand and seal and the Company has caused its common seal to be hereunto affixed the day and year first above written.

Signed sealed and delivered by the within-named [Inventor] in the presence of :—

The common seal of [Company] was hereunto affixed in the presence of :—

} Director[s]
Secretary

V

Licence to make use and vend Patented Articles (*m*).

THIS LICENCE is made the —— day of —— 19— BETWEEN —— of —— (hereinafter called "the Licensor") of the one part and —— of —— (hereinafter called "the Licensee") of the other part. Parties.

WHEREAS :—

A. The Licensor is the registered proprietor of Letters Patent No. —— dated the —— day of —— for "Improvements in or relating to ——". Recital of proprietorship of patent.

B. The Licensor has agreed to grant a [an exclusive] licence to the Licensee to make use and vend articles in accordance with the invention protected by the said Letters Patent on the terms hereinafter set forth. Recital of agreement for licence.

NOW THIS DEED WITNESSETH and it is hereby agreed by and between the parties as follows :—

1. In pursuance of the said agreement the Licensor hereby grants to the Licensee a licence to make use and vend articles in accordance with the said Letters Patent during the remainder of the term of the said Letters Patent and any extension thereof. Grant of licence.

2. The Licensee shall during the continuance of the licence hereby granted pay to the Licensor a royalty of —— in respect of each article manufactured [and used or sold] by him in accordance with the said Letters Patent. Royalty.

(*m*) A licence may be in writing only, but a deed is more usually employed. Where clause 5 is included the stamp duty is *ad valorem* on the total of the minimum royalties payable under the licence. If the clause is omitted the duty is 10s. In drafting a licence under a patent, the provisions of s. 38 of the Patents and Designs Acts, 1907—1946, should be borne in mind. This section renders unlawful certain restrictions on the activities of the licensee.

Licensee to keep accounts and make returns.

3. The Licensee shall keep true and particular accounts of all articles manufactured used and sold by him in accordance with the said Letters Patent and of all royalties payable by him hereunder and shall within twenty-eight days after the —— day of —— the —— day of —— the —— day of —— and the —— day of —— in each year during which this Licence shall continue in force deliver to the Licensor a true account of all such articles and of all royalties due to the Licensor in respect of the preceding three months up to the last preceding —— day of —— —— day of —— —— day of —— or —— day of —— as the case may be and shall at the same time pay to the Licensor the amount of the royalties shown to be due PROVIDED that if this Licence shall terminate on a day other than the —— day of —— the —— day of —— the —— day of —— or the —— day of —— the last account and payment shall be rendered and made within twenty-eight days of the termination of this Licence and shall be in respect of the period from the last day to which an account was due to be rendered to the termination of this Licence.

Power to licensor to inspect accounts.

4. The Licensee shall permit the Licensor or his accountant or other person or persons duly authorised by him once in every three months on notice duly given at reasonable times in the day time to inspect verify and take copies of and extracts from the accounts to be kept by the Licensee under the last preceding clause and shall on demand produce to the Licensor or his accountant or such other person or persons aforesaid any receipts or vouchers relating thereto.

Minimum royalty.

5. In the event of the royalties payable by the Licensee to the Licensor in accordance with clause 2 hereof being less than the sum of £—— in any year ending on the —— day of —— the Licensee shall within twenty-eight days of the said —— day of —— pay to the Licensor in addition to any royalties which may then be due and payable such sum as will bring the amount of the royalties paid in respect of each year ending on the —— day of —— aforesaid to the said sum of £——.

Right to export.

6. The Licensee shall have the right to export any articles manufactured by him in accordance with the said Letters Patent (*n*).

Prohibition against assignment and sub-licences.

7. The Licensee shall not assign the benefit of this Licence and shall not be entitled to grant sub-licences hereunder (*o*).

Marking.

8. The Licensee shall mark in a legible manner on some conspicuous part all articles manufactured by him according to the said Letters Patent with the words "Patent No. ——/19—" (*p*).

Payment of renewal fees

9. The Licensor shall pay all fees necessary for the renewal of the said Letters Patent at least fourteen days before the same become due for payment [and shall if so requested produce to the Licensee the receipts for payment thereof PROVIDED that if the Licensor shall make default in paying any such fees the Licensee may pay the same and deduct the amount so paid by him from any royalties payable by him under this Licence].

(*n*) This clause may be inserted where there are or may be any foreign patents under which the licensee is not to be licensed.

(*o*) This clause may be unnecessary, but it is submitted that it is preferable to include it: see *Lawson* v. *Macpherson & Co.* (1897), 14 R. P. C. 696.

(*p*) This will be the number and year of the patent. See s. 33, Patents and Designs Acts, 1907—1946.

Royalties to cease of patent revoked.

10. In the event of the said Letters Patent [lapsing through non-payment of renewal fees or] being revoked or declared invalid by a Court of competent jurisdiction this Licence shall (unless the judgment or order is reversed on appeal) determine and no further royalties shall be payable but without prejudice to any rights that may have accrued to either of the parties hereto up to the date of such determination.

Licensee not to dispute validity.

11. The Licensee shall not at any time dispute the validity of any of the claims of the said Letters Patent.

Legal proceedings.

12. The Licensor shall not be under any obligation to institute any legal proceedings against any third party for infringement of the said Letters Patent PROVIDED however that in the event of any such infringement being brought to the notice of the Licensor by the Licensee and the Licensor failing to institute proceedings against the infringer within three months of the same having been brought to his notice the Licensee shall not be under any further obligation to pay royalties to the Licensor hereunder until the Licensor shall have commenced proceedings against such infringer.

Exclusivity.

13. [The Licensor shall not during the continuance of this Licence grant a licence under the said Letters Patent to any person other than the Licensee nor shall the Licensor himself during the continuance of this Licence make use exercise or vend in accordance with the said Letters Patent.]

Working of patent.

14. The Licensee shall manufacture at least —— articles during each year commencing on the —— day of —— in accordance with the said Letters Patent and shall use his best endeavours to sell the same.

Licensor's right to determine.

15. The Licensor shall have the right to determine this Licence by twenty-eight days' previous notice in writing to the Licensee upon the happening of any of the following events :—

(a) If any royalty payable hereunder shall be in arrear for twenty-eight days whether the same shall have been legally demanded or not

(b) If the Licensee shall fail to perform or observe any of the covenants in these presents on his part to be performed or observed

(c) If the Licensee shall be adjudged bankrupt or shall commit an act of bankruptcy or make a composition with his creditors [If the Licensee shall have a receiver appointed of the whole or any part of its assets or if an order shall be made or a resolution passed for winding up the Licensee unless such order or resolution is part of a scheme of reconstruction of the Licensee.]

Arbitration.

16. Any dispute question or difference arising under this Licence as to the rights or duties of either of the parties or the construction or effect of any of the provisions of this Licence shall be referred to an arbitrator to be agreed between the parties and in default of agreement to be nominated by —— and such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Acts 1889 to 1934 or any re-enactment or modification thereof for the time being in force.

IN WITNESS whereof the parties have hereunto set their hands and seals the day and year first above written.

Signed sealed and delivered by the within-named [Licensor] in the presence of :—

Signed sealed and delivered by the within-named [Licensee] in the presence of :—

VI

Agreement for Licence to be granted under Letters Patent in Scheduled Form (*q*).

Parties. THIS AGREEMENT is made the —— day of —— 19— BETWEEN —— of —— (hereinafter called "the Licensor") of the one part and —— of —— (hereinafter called "the Licensee") of the other part.

WHEREAS :—

Recital of proprietorship. A
B [*Recitals as in Form No. V.*]

Recital of agreement for licence. NOW IT IS HEREBY AGREED by and between the parties hereto as follows :—

Agreement for licence in scheduled form and subject to provisions of agreement. 1. In pursuance of the said agreement the Licensor shall as soon as possible after the execution of these presents grant in favour of the Licensee and the Licensee shall take a [an exclusive] licence to make use and vend articles in accordance with the said Letters Patent within the United Kingdom of Great Britain and Northern Ireland and the Isle of Man for the remainder of the term of the said Letters Patent and any extension thereof which may be granted. The said licence shall be subject to the provisions of this agreement and shall be in accordance with the Schedule hereto and until such licence shall be granted this agreement shall take effect as a licence.

Royalty. 2. The Licensee shall during the continuance of the said licence pay to the Licensor a royalty of —— in respect of each article manufactured [and used or sold] by him in accordance with the said Letters Patent.

Accounts. 3. [*See clause 3 of Precedent No. V.*]

Inspection of accounts. 4. [*See clause 4 of Precedent No. V.*]

Minimum royalty. 5. [*See clause 5 of Precedent No. V.*]

Export. 6. [*See clause 6 of Precedent No. V.*]

Assignment and sub-licences. 7. [*See clause 7 of Precedent No. V.*]

(*q*) Stamp 6d. if clause 5 is omitted; if not, *ad valorem* on the total of the minimum royalties payable. This form provides for the execution of a short form of licence under seal in accordance with the schedule after the agreement has been executed. This procedure has the advantage that the short form only is registered at the Patent Office and the provisions of the agreement are kept off the register which is open to public inspection. The Patent Office call for the agreement for examination but a certified copy is not required.

8. [*See clause 8 of Precedent No. V.*] Marking.

9. [*See clause 9 of Precedent No. V.*] Renewal fees.

10. [*See clause 10 of Precedent No. V.*] Revocation.

11. [*See clause 11 of Precedent No. V.*] Validity.

12. [*See clause 12 of Precedent No. V.*] Legal proceedings.

[13. The Licensor shall not during the continuance of this agreement or the licence to be granted pursuant thereto grant a licence under the said Letters Patent to any person other than the Licensee nor shall the Licensor himself during the continuance of this agreement or of the said licence make use exercise or vend in accordance with the said Letters Patent.] Exclusivity of licence.

14. [*See clause 14 of Precedent No. V.*] Working of patent.

15. The Licensor shall have the right to determine this agreement and the licence to be granted pursuant thereto by twenty-eight days' previous notice to the Licensee upon the happening of any of the following events :— Licensor's right to determine.

(a) If any royalty payable hereunder shall be in arrear for twenty-eight days whether the same shall have been legally demanded or not

(b) If the Licensee shall fail to perform or observe any of the covenants in these presents on his part to be performed or observed

(c) If the Licensee shall be adjudged bankrupt or shall commit an act of bankruptcy or make a composition with his creditors [If the Licensee shall have a receiver appointed of the whole or any part of its assets or if an order shall be made or a resolution passed for winding up the Licensee unless such order or resolution is part of a scheme of reconstruction of the Licensee.]

14. Any dispute question or difference arising under this agreement or under the said licence as to the rights or duties of either of the parties or the construction of this agreement or of the said licence shall be referred to an arbitrator to be agreed between the parties and in default of agreement to be nominated by —— and such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Acts 1889 to 1934 or any re-enactment or modification thereof for the time being in force. Arbitration.

As WITNESS the hands of the parties the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

THIS DEED (*r*) made the —— day of —— 19— BETWEEN —— of —— (hereinafter called "the Licensor") of the one part and —— of —— (hereinafter called "the Licensee") of the other part WITNESSETH that the Licensor doth hereby grant unto the Licensee a licence to make use exercise and vend certain "Improvements in ——" according to Letters Patent No. —— upon the terms and conditions Form of licence.

(*r*) Stamp 10s.

of an agreement dated the —— day of —— 19— and made between the Licensor of the one part and the Licensee of the other part.

IN WITNESS whereof the parties have hereunto set their hands and seals the day and year first above written.

Signed by the said [Licensor] in the presence of :—

Signed by the said [Licensee] in the presence of :—

VII

Agreement for Licence under Patent not yet Granted (*s*).

Parties.

THIS DEED is made the —— day of —— 19— BETWEEN —— of —— (hereinafter called "the Inventor") of the first part —— Limited whose registered office is situate at —— (hereinafter called "the Company") of the second part and —— of —— (hereinafter called "the Licensee") of the third part.

WHEREAS :—

Recital of joint application for patent.

A. The Inventor and the Company have jointly filed an application for Letters Patent for an invention for "Improvements in ——" on the —— day of —— the said application having been numbered ——

Recital of assignment of inventor's interest.

B. By an agreement dated the —— day of —— and made between the Inventor of the one part and the Company of the other part the Inventor agreed to assign to the Company his interest in the said invention and in the said application and any Letters Patent to be granted pursuant thereto and the Company have on the —— day of —— filed a request at the Patent Office for Letters Patent pursuant to the said application to be granted to the Company in accordance with section 12 (1) (b) of the Patents and Designs Acts 1907—1946 which request was granted by the Comptroller of Patents on the —— day of —— (*t*)

Agreement for licence.

C. The Company have agreed to grant to the Licensee a licence to make use exercise and vend in accordance with the process and apparatus the subject of the said application and any Letters Patent to be granted pursuant thereto upon the terms hereinafter appearing.

NOW IT IS HEREBY AGREED by and between the parties hereto as follows :—

Agreement to grant licence when patent granted.

1. The Company shall forthwith upon the granting of Letters Patent pursuant to the said application grant and the Licensee shall take a licence to make use exercise and vend in accordance with the invention the subject of the said Letters Patent within the United Kingdom of Great Britain and Northern Ireland and the Isle of Man for the full term of the said Letters Patent and any extension thereof.

(*s*) This Form is an agreement for a licence to be granted in scheduled form and is appropriate where application has been made for grant of Letters Patent but such Letters Patent have not yet been sealed. Upon sealing of the Letters Patent the scheduled form of licence is executed and registered at the Patent Office and the terms of the agreement are kept off the register as in Precedent No. VI. Stamp 10s. as no minimum royalty clause is included.

(*t*) An agreement such as Precedent No. III or No. IV is recited.

2. The licence referred to in the last preceding clause shall be in accordance with the Schedule hereto and shall be subject to the provisions of this agreement and until such licence shall be granted this agreement shall take effect as a licence. Form of licence.

3. The Licensee shall have the right during the continuance of this agreement and the licence to be granted pursuant thereto to make use and exercise the process and apparatus the subject of the said application and Letters Patent and to vend material manufactured in accordance therewith. Scope of licence.

4. The Licensee shall have the right to grant sub-licences and to export material manufactured by him hereunder. Right to grant sub-licences and export.

5. The Licensee shall use the process and apparatus the subject of the said application at his works at —— and shall manufacture at least —— tons of material in accordance therewith in each year commencing on the —— day of —— during the continuance of this agreement and the licence to be granted pursuant thereto. Working of patent.

6. The Licensee shall during the continuance of this agreement and any licence to be granted pursuant thereto pay to the Company the sum of —— per ton of material manufactured by him or by any sub-licensee in accordance with the process or by means of apparatus the subject of the said application or Letters Patent pursuant thereto. Royalty.

7. The Licensee shall keep true and particular accounts of all material manufactured and sold by him in accordance with the process or apparatus according to the said application or Letters Patent and of all royalties payable by him hereunder and shall within twenty-eight days after the —— day of —— the —— day of —— the —— day of —— and the —— day of —— in each year during which this agreement and the licence pursuant thereto shall continue in force deliver to the Company a true account of all such material so manufactured and sold and of all royalties due hereunder in respect of the preceding three months up to the last preceding —— day of —— day of —— day of —— or —— day of —— as the case may be and shall at the same time pay to the Company the amount of the royalties shown to be due PROVIDED that if this agreement or the licence pursuant thereto shall terminate on a day other than the —— day of —— the —— day of —— the —— day of —— or the —— day of —— the last account and payment shall be rendered and made within twenty-eight days of the termination of this agreement and of the said licence and shall be in respect of the period from the last day to which an account was due to be rendered until the day of such termination. Licensee to keep accounts.

8. The Licensee shall permit the Company's accountant or other duly authorised representative or representatives of the Company once in every three months on notice duly given at reasonable times in the day time to inspect verify and take copies of and extracts from the accounts to be kept by the Licensee under the last preceding clause and shall on demand produce to the Company's accountant or other duly authorised representative or representatives as aforesaid any receipts or vouchers relating thereto. Power to licensee to inspect accounts.

9. The Licensee shall not assign the benefit of this agreement or the licence to be granted pursuant thereto. Prohibition on assignment.

10. The Company shall pay all fees necessary during the continuance of this agreement or the licence to be granted pursuant thereto Renewal fees.

for the renewal of the said Letters Patent and shall if requested so to do produce to the Licensee the receipts for payment of such fees at least fourteen days before the same become due Provided that if the Company shall make default in paying any such renewal fee the Licensee may pay the said fee and deduct the amount of such payment from the royalties payable by him hereunder.

Provision if patent not granted or declared invalid.

11. If Letters Patent are not granted pursuant to the said application or are only granted in such form that they do not effectively protect the said invention or if such Letters Patent (when granted) shall be revoked or declared invalid or if the claims thereof which effectively cover the said invention shall be declared invalid by a Court of competent jurisdiction the payment of royalties hereunder shall cease as from the date of the judgment or decision of the Court Provided that if such judgment or decision shall be reversed on appeal the said royalties shall forthwith again become payable together with all royalties which would have been payable but for the said judgment or decision.

Improvements.

12 (1) This agreement and the licence to be granted pursuant thereto shall include any improvement in or addition to the invention set forth in the said application or the Letters Patent granted pursuant thereto By improvement or addition is meant such invention as could either be or have been combined with the said application to form the subject of one grant of Letters Patent or which could form the subject of a patent of addition to the Letters Patent to be granted upon the said application and which may be or become the property of or under the control of the Company during the continuance of this agreement or the licence granted pursuant thereto The Company shall take all steps which may be within their power and execute and do all such documents acts and things which may be necessary to grant the same rights to the Licensee in respect of any such improvement or addition as are herein granted in relation to the said application and the Letters Patent to be granted pursuant thereto The Licensee shall in respect of the manufacture use exercise or sale of any such improvement or addition pay royalties in accordance with clause 6 hereof but no increased royalty shall be payable in respect thereof

(2) The Licensee shall in like manner advise the Company of any such improvement or addition which may be invented by him or by any person employed by him or by any sub-licensee and shall (in so far as it may be in his power to do so) grant to the Company a free licence for the duration of any Letters Patent that may be granted in respect of any such improvement or addition.

Company to give licensee technical information and instruction.

13 (1) The Company shall at the request of the Licensee provide the Licensee with a statement in writing describing the process and apparatus the subject of the said application and all equipment ancillary thereto the said statement to include drawings and full operating instructions sufficient to enable the said apparatus and equipment to be installed and manufacture to be conducted on a commercial scale by the Licensee [Neither the Company nor the Licensee shall during the continuance of this agreement and the licence to be granted pursuant thereto supply a copy of the said statement to any other person except with the concurrence in writing of the other party]

(2) In addition to the statement referred to in the last preceding

clause the Company shall arrange for an expert from their technical staff who is fully conversant with the said process and apparatus to visit the works of the Licensee and to instruct any person or persons whom the Licensee may nominate in the said process and in the operation of the said apparatus The Licensee shall pay to the Company the sum of £— per day for the services of the said technical expert which sum shall include his travelling and other expenses.

Marking.

14. The Licensee shall mark in a legible manner on some conspicuous part all material manufactured by him according to the said Letters Patent when granted with the word " Patent " and the number and year of the said Letters Patent The Licensee shall bind any sub-licensee to mark the said material in like manner.

Licensee not to dispute validity.

15. The Licensee shall not at any time dispute the validity of any of the claims of the said Letters Patent the subject of this agreement or of the licence to be granted pursuant thereto.

Legal proceedings.

16. Neither the Company nor the Licensee shall be under any obligation to institute or defend any legal proceedings in respect of the said Letters Patent or any infringement thereof.

Licensor's power to determine.

17. The Licensor shall have the right to determine this agreement and the licence to be granted pursuant thereto by twenty-eight days' previous notice in writing to the Licensee upon the happening of any of the following events :—

(a) If any royalty payable hereunder shall be in arrear for twenty-eight days whether the same shall have been formally demanded or not

(b) If the Licensee shall fail to perform or observe any of the covenants on his part to be performed or observed

(c) If the Licensee shall be adjudged bankrupt or commit an act of bankruptcy or make a composition with his creditors [If the Licensee shall have a receiver appointed of the whole or any part of its assets or if an order shall be made or a resolution passed for winding up the Licensee unless such order or resolution is part of a scheme of reconstruction of the Licensee].

Arbitration.

18. Any dispute question or difference arising under this agreement or the licence to be granted pursuant thereto as to the rights or duties of any of the parties or the construction or effect of any of the provisions of this agreement or the licence to be granted pursuant thereto shall be referred to an arbitrator to be agreed between the parties and in default of agreement to be nominated by —— and such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Acts 1889 to 1934 or any re-enactment or modification thereof for the time being in force.

AS WITNESS the hands of the parties the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

Form of licence.

THIS DEED (*u*) made the —— day of —— 19— BETWEEN [Company] whose registered office is situate at —— (hereinafter called " the Company ") of the one part and [Licensee] of —— (hereinafter called " the Licensee ") of the other part.

(*u*) Stamp 10s.

WITNESSETH that the Company doth hereby grant unto the Licensee a licence to make use exercise and vend certain "Improvements in ——" according to Letters Patent No. —— upon the terms and conditions contained in an agreement dated the —— day of —— 19— and made between —— of the first part the Company of the second part and the Licensee of the third part.

IN WITNESS whereof the Company have caused their common seal to be hereunto affixed and the Licensee has hereunto affixed his hand and seal the day and year first above written.

Signed by the said [Inventor] in the presence of :—

The common seal of [Company] was hereunto affixed in the presence of :—

} Director[s]

Secretary

Signed by the said [Licensee] in the presence of :—

VIII

Agreement for Licences under Foreign Patents (*v*).

Parties. AN AGREEMENT made this —— day of —— 19— BETWEEN —— of —— (hereinafter called "the Licensor") of the one part and —— of —— (hereinafter called "the Licensee") of the other part.

WHEREAS :—

Recital of proprietorship. A. The Licensor is the beneficial owner of the Dominion and foreign patents set out in the Schedule hereto

Agreement to grant licences. B. The Licensor has agreed with the Licensee to grant him licences under the said patents under the terms hereinafter appearing

NOW IT IS HEREBY AGREED by and between the parties hereto as follows :—

Licences to be granted. 1. In consideration of the royalties hereinafter reserved the Licensor shall grant and the Licensee shall take a licence to manufacture and sell articles under each of the said Dominion and foreign patents set out in the Schedule hereto for the residue now unexpired of the respective terms for which the said patents were granted and during any extension of the term thereof.

Form of licences. 2 (1) The said licences shall be drawn up by and at the expense of the Licensee and shall be in the usual form of licences in use in the

(*v*) Stamp *ad valorem* on the total of the minimum royalties. The licences to be granted pursuant to this agreement will be prepared in accordance with the forms employed in the countries concerned. It may be desirable to consult a patent agent.

respective countries in which the said scheduled patents have been granted and shall be subject to the provisions of this agreement

(2) The Licensee shall at his own expense register the said licences in any of the countries in respect of which they have been granted and in which it is possible to register the same. Registration.

3. The Licensee shall during the continuance of this agreement and the licences to be granted pursuant thereto pay to the Licensor a royalty of —% of the selling price of all articles manufactured or sold by him [or by any sub-licensee] in any of the countries set out in the Schedule hereto in accordance with the invention the subject of the said scheduled patents. Royalty.

4. [*Clause 3 of Precedent No. V.*] Accounts.

5. [*Clause 4 of Precedent No. V.*] Inspection of accounts.

6. [*Clause 5 of Precedent No. V.*] Minimum royalty.

7. The Licensee shall not assign the benefit of this agreement or of any licence to be granted pursuant thereto [but shall be entitled to grant sub-licences in any of the scheduled countries.] Prohibition on assignment [sub-licences].

8. The Licensee shall comply with the provisions of any law in any of the scheduled countries as to the marking of patented articles or otherwise and shall keep the Licensor indemnified against any penalty which may be incurred for breach thereof. The Licensee shall further in any of the scheduled countries in which it may be desirable though not obligatory to mark patented articles mark any articles with the number of the patent in any such country in such a manner as may be necessary to ensure that the rights of the Licensor in such patent are fully maintained whether as to his right to recover damages from an infringer or otherwise [The Licensee shall expressly bind any sub-licensee to observe the provisions of this clause.] Compliance with foreign law as to marking or otherwise.

9. [*Clause 9 of Precedent No. V.*] Renewal fees.

10. Neither party shall be bound to institute or defend any legal proceedings in relation to any of the scheduled patents whether for infringement or for revocation thereof or otherwise. Legal proceedings.

11. Neither this agreement or any licence to be granted pursuant thereto shall be deemed to be a representation or warranty that the scheduled patents or any of them are valid. Disclaimer of warranty as to validity.

12. The Licensor shall have the right to determine this agreement or any licence granted pursuant thereto by twenty-eight days' previous notice in writing to the Licensee upon the happening of any of the following events :— Licensor's right to determine.

(a) If any royalty payable hereunder shall be in arrear for twenty-eight days whether the same shall have been formally demanded or not

(b) If the Licensee shall fail to perform or observe any of the covenants in this agreement or any licence pursuant thereto on his part to be performed or observed

(c) If the Licensee shall be adjudged bankrupt or shall commit an act of bankruptcy or make a composition with his creditors [If the Licensee shall have a receiver appointed of any of its

assets or if an order shall be made or a resolution passed for winding-up the Licensee unless such order or resolution is part of a scheme of reconstruction of the Licensee.]

Interpretation.

13. This agreement shall be read and construed according to English law.

Arbitration.

14. Any dispute question or difference arising under this agreement [or any licence granted pursuant thereto] as to the rights or duties of either of the parties or the construction or effect of any of the provisions of this agreement [or any such licence as aforesaid] shall be referred to an arbitrator to be agreed between the parties and in default of agreement to be nominated by —— and such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Acts 1889 to 1934 or any re-enactment or modification thereof for the time being in force.

As WITNESS the hands of the parties the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

Country.	Number.	Date.	Title.	Registered Proprietor.

Signed by the said [Licensor] in the presence of :—

Signed by the said [Licensee] in the presence of :—

IX

Service Agreement dealing with Inventions of Employee (*w*).

Parties.

THIS AGREEMENT is made the —— day of —— 19— BETWEEN —— of —— (hereinafter called " the Employer ") of the one part and —— of —— (hereinafter called " the Employee ").

Agreement for service.

WHEREAS the Employer has agreed to engage the Employee and the Employee has agreed to enter the employment of the Employer upon the terms hereinafter set forth.

NOW IT IS HEREBY AGREED by and between the parties hereto as follows :—

Capacity of employment.

1. The Employer shall employ the Employee as a —— [or in such other capacity as may be agreed] during the continuance of this agreement.

Term of employment.

2. The said employment shall commence on the —— day of ——

(*w*) Stamp 6d.

and shall continue until determined by —— months' notice in writing given by one party to the other such notice to be given on the last day of any calendar month.

Salary.

3. The Employer shall pay to the Employee a salary for his services at the rate of £—— per annum the said salary to be paid by equal monthly payments on the last day of each calendar month [the first payment to be for the proportion of the said monthly payment which the number of days during which the Employee has served bears to the number of days in the month of ——.]

Employment to be whole time and exclusive.

4. The Employee shall during the continuance of this agreement give the whole of his time to the service of the Employer and shall not engage in any other employment or paid occupation whatsoever without the previous consent in writing of the Employer.

Disclosure of inventions by employee.

5. (1) In the event of the Employee at any time during the continuance of this agreement making or becoming possessed of any invention discovery or design relating to the business of the Employer or to any article manufactured or sold by the Employer or to any process or apparatus useful in the manufacture of any such article the Employee shall forthwith disclose the same to the Employer

Assignment of inventions.

(2) In the case of any invention discovery or design made by the Employee whether alone or jointly with any other person and falling within sub-clause (1) of this clause the Employee shall at the request and cost of the Employer execute and do all such documents acts and things as the Employer may require for obtaining Letters Patent or a registered design in this country or equivalent protection abroad either alone or jointly with the Employer or in the sole name of the Employer and for vesting the same in the Employer absolutely for his sole use and benefit.

Improvements.

6. In the event of the Employee within —— months after the determination of this agreement making or becoming possessed of any improvement in any invention discovery or design falling within the provisions of the last preceding clause the Employee shall forthwith disclose the same to the Employer and in the case of any such improvement made by the Employee whether alone or jointly with any other person the provisions of sub-clause (2) of the last preceding clause shall apply thereto (*x*).

Employee to be entitled to invention not wanted by employer.

7. In the event of the Employer not being interested in any invention discovery or design disclosed to him by the Employee in accordance with the provisions of clause 5 or clause 6 hereof he shall as soon as possible notify the Employee to that effect whereupon the Employee shall be entitled to the said invention discovery or design for his own use and benefit.

Documents and drawings to be property of employer.

8. Any documents and drawings (including notes and memoranda) which may come into the possession of the Employee during the continuance of this agreement and which relate to the business production or manufacture of the Employer are the property of the Employer and shall be returned to him by the Employee at the termination of this agreement.

Secret processes and information.

9. The Employee shall not at any time disclose to any person or

(*x*) This clause should be used with discretion. In the case of a junior employee it would probably be unnecessary and in any case the law of restraint of trade requires consideration.

make use of any secret process of the Employer or any matter or thing relating to the business of the Employer which may be disclosed to him in confidence by or on behalf of the Employer.

Employers' power to determine in specified events.

10. The Employer shall be entitled to determine this agreement and the engagement of the Employee hereunder without payment of salary to the Employee for the current month in the event of disobedience or gross misconduct of the Employee or in the event of any breach or non-observance by the Employee of any of the provisions of this agreement on the part of the Employee to be performed or observed.

Interpretation.

11. In this agreement the expression " the Employer " shall include his successors and assigns and the expression " the Employee " shall include his personal representatives.

Arbitration.

12. Arbitration clause—see clause 14 of Precedent No. VIII.

As WITNESS the hands of the parties the day and year first above written.

Signed by the said [Employer] in the presence of :—

Signed by the said [Employee] in the presence of :—

Form 16.

Release of part of the Property subject to a Mortgage to a Bank (*a*).

Parties. THIS SURRENDER AND RELEASE made *etc.* BETWEEN The —— Bank Ltd. whose registered office is at —— (hereinafter called "the Bank") of the one part and A B of *etc.* (hereinafter called "the Mortgagor") of the other part

WHEREAS :—

Recitals of mortgage by demise (1) This deed is supplemental to a Mortgage (hereinafter called "the Principal Deed") dated *etc.* and made between the Mortgagor of the one part and the Bank of the other part whereby the Mortgagor demised the property hereinafter described with other property to the Bank for the term of 3,000 years without impeachment of waste by way of mortgage in consideration of the Bank making or continuing advances or otherwise giving credit or affording facilities to the Mortgagor.

of agreement to release. (2) The Bank being satisfied with the security which will remain after executing this deed has agreed to execute such surrender and release as hereinafter appearing.

NOW THIS DEED WITNESSETH as follows :—

Release and surrender of part. 1. The Bank as Mortgagee and according to its estate or interest hereby surrenders and releases unto the Mortgagor ALL THAT *etc.* (which said premises are part of the property comprised in the Principal Deed) TO THE INTENT that the said premises may be discharged from all claims under the Principal Deed and that any estate or interest of the Bank in such premises shall merge or be extinguished.

Acknowledgment. 2. The Bank hereby acknowledges the right of the Mortgagor to production and delivery of copies of the documents specified in the Schedule hereto.

IN WITNESS *etc.*

THE SCHEDULE BEFORE REFERRED TO.

(*a*). Stamp 10s. This form was drafted by Mr. P. S. Brown, of Warton, near Preston. It can be adapted to meet the case where part of the debt is repaid. It often occurs that a man in business deposits his deeds to meet some unusual expense but normally his account is clear from overdraft. This is to meet, principally, the latter case.

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